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No. 2195 /

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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Transcript of Record.  
(IN THREE VOLUMES)

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H. J. HEINZ COMPANY (a Corporation),  
Appellant,

vs.

MAX M. COHN,  
Appellee.

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VOLUME I.  
(Pages 1 to 304, Inclusive.)

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Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

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FILED

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*In the United States Circuit Court of Appeals, Ninth  
Circuit.*

No. —.

H. J. HEINZ COMPANY, a Corporation,  
Appellant,

vs.

MAX M. COHN,  
Appellee.

**Stipulation Under Rule 23.**

IT IS HEREBY STIPULATED AND  
AGREED by and between counsel for the above parties that in printing the transcript of the record on the appeal in the above-entitled cause, the Clerk may omit therefrom the following patents:

United States Patent No. 369,059, August 30, 1887,  
Jacobson.

United States Patent No. 752,537, February 16, 1904,  
Eneas.

British Patent No. 1,119, of 1861, to Johnson.

“ “ “ 5,823, of 1884, to Peace.

“ “ “ 2,339, of 1894, to Pescheux et al.

“ “ “ 7,955, of 1895, to Watts.

The Clerk is hereby requested, in accordance with the above stipulation, to omit the above specified patents in printing the transcript of the record in the above-entitled case.

THOMAS A. BANNING,  
For Appellant.

CHAS. E. TOWNSEND,  
For Appellee.

[Endorsed]: No. 2195. U. S. Circuit Court of Appeals, Ninth Circuit. H. J. Heinz Company, Appellant, vs. Max M. Cohn, Appellee. Stipulation Under Rule 23. Filed Nov. 15, 1912. F. D. Monekton, Clerk.

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*In the Circuit Court of the United States for the Northern District of California, Ninth Circuit.*

IN EQUITY—ON PATENTS Nos. 824,908 and 835,850.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY, a Corporation,

Respondent.

### **Bill of Complaint.**

To the Honorable, the Judges of the Circuit Court of the United States for the Northern District of California, Ninth Circuit, Sitting in Chancery:

Max M. Cohn, a citizen of the United States, a resident of the City and County of San Francisco, State of California, complainant, brings this his bill of complaint against the H. J. Heinz Company, a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, and having an office and a regular and established place of business in the City and County of San Francisco, State of California, aforesaid, and a managing agent there conducting the same, in the Northern District of California, where the acts of infringement herein



complained of have been committed; and thereupon your orator complains and says:

1. That at all the times hereinafter mentioned the complainant, Max M. Cohn, was and is a citizen of the United States, and a resident of the City and County of San Francisco, in said [1\*] State of California, and that at all said times the H. J. Heinz Company, respondent, was and still is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, and having a regular and established place of business at the City and County of San Francisco, State of California, and a managing agent there conducting the same, in the Northern District of California.

2. That heretofore, to wit, prior to the 8th day of November, 1904, Max M. Cohn, the complainant, a citizen of the United States, and resident of San Francisco, was the original, first and sole inventor of a certain new and useful invention entitled "Envelope," having an unpunctured face of relatively opaque stock, said envelope-face having a portion to which a preparation has been applied to render such portion transparent, and a colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock, a more particular description of which envelope will be found in the letters patent issued therefor by the Government of the United States, and hereinafter referred to, and to which special reference is hereby made.

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\*Page-number appearing at foot of page of original certified Record.

3. That the said envelope was a new and useful invention not known to, or used by, others in this country, nor patented nor described in any printed publication in this or any foreign country before the invention and discovery thereof by said Max M. Cohn, or more than two years before his application for a patent therefor; and not in public use or on sale for more than two years prior to his application for a patent therefor, as hereinafter alleged; nor had the same been abandoned by him prior to his said application; nor had the said Max M. Cohn, or his legal representatives or assigns made or filed any [2] application for a patent in any foreign country for said invention more than twelve months prior to his said application therefor in this country.

4. And your orator further shows unto your Honors that the said Max M. Cohn, being as aforesaid the original, first and sole inventor of said envelope, did, on the 8th day of November, 1904, duly and regularly make and file in the Patent Office of the United States an application in writing praying for the granting and issuance of letters patent of the United States for the same.

5. And your orator further shows unto your Honors that after proceedings duly and regularly had and taken in said application, to wit, on November 13, 1906, letters patent of the United States bearing date on that day, and numbered 835,850, were granted, issued and delivered by the Government of the United States to the said Max M. Cohn, whereby there was granted to him, his heirs or assigns, for the full term of seventeen years from the 13th day

of November, 1906, the sole and exclusive right to make, use and vend the said invention throughout the United States of America and the territories thereof.

6. And your orator further shows unto your Honors that said letters patent were issued in due form of law in the name of the United States of America, under the seal of the Patent Office of the United States, and were signed by the Commissioner of Patents of the United States, and prior to the issuance thereof all proceedings were had and taken which were required by law to be had and taken prior to the issuance of letters patent for new and useful inventions, which letters patent are ready to be produced in court by your orator, or a duly authenticated copy thereof, and profert is hereby made of said letters patent. [3]

7. That heretofore, to wit, prior to the 17th day of January, 1905, Max M. Cohn, complainant, a citizen of the United States, and a resident of the City and County of San Francisco, State of California, was the original, first and sole inventor of certain other new and useful inventions entitled "Envelope," having a window through which the addressee's name on an enclosure may show through, said window being in outline characteristic of some symbol of trade, a tinted or colored border surrounding and giving definition of said window and permanent advertising matter forming no part of the address, appearing on said tinted border, and related to and in juxtaposition with the outline of said window, a more particular description of which will be found



in the letters patent issued therefor by the Government of the United States, and hereinafter referred to, and to which special reference is hereby made.

8. That the said envelope was a new and useful invention not known to, or used by, others in this country, nor patented nor described in any printed publication in this or any foreign country before the invention or discovery thereof by said Max M. Cohn, or more than two years before his application for a patent therefor; and at the time of his application for a patent therefor, as hereinafter alleged, the same had not been in public use nor on sale in the United States for more than two years, nor had the same been abandoned; nor had said Max M. Cohn or his legal representatives or assigns made or filed any application for a patent in any foreign country for said invention more than twelve months prior to his said application therefor in this country.

9. And your orator further shows that the said Max M. Cohn, being as aforesaid, the original, first and sole inventor, [4] of said envelope, did, on the 17th day of January, 1905, duly and regularly make and file in the Patent Office of the United States an application in writing praying for the granting and issuance of letters patent of the United States for the same.

10. And your orator further shows unto your Honors that after proceedings duly had and taken in the matter of said application, that thereafter, to wit, on the 3d day of July, 1906, letters patent of the United States bearing date on that day and numbered 824,908, were granted, issued and delivered by

the Government of the United States to the said Max M. Cohn, whereby there were granted to him, his heirs or assigns, for the full term of seventeen years from the 3d day of July, 1906, the sole and exclusive right to make, use and vend the said invention throughout the United States of America, and the territories thereof.

11. And your orator further shows unto your Honors that said letters patent were issued in due form of law in the name of the United States of America, under the seal of the Patent Office of the United States, and were signed by the Commissioner of Patents of the United States, and prior to the issuance thereof all proceedings were had and taken which were required by law to be had and taken prior to the issuance of letters patent for new and useful inventions, which letters patent are ready to be produced in court by your orator, or a duly authenticated copy thereof, and profert is hereby made of said letters patent.

12. And your orator further shows that ever since the issuance of said patents numbered 835,850 and 824,908 the said Max M. Cohn was and is the sole owner of all the right, title and interest in and to said inventions and said several letters [5] patent therefor, aforesaid, together with all claims and demands both in law and in equity for damages and profits accrued or to accrue on account of infringements of said several letters patent.

13. And your orator further shows that said invention, and the inventions described and claimed in each of said patents, are capable and are designed

for conjoint use in one and the same envelope, and that they each are, and have been ever since the issuance of said patents, conjointly used by the complainant and respondent. And the complainant has never acquiesced in any invasions of his rights therein, and upon all of his envelopes made and sold by him there has been stamped and printed, or caused to be stamped and printed thereon, the word "Patented," together with the dates of said patents. That the said inventions protected by said several patents are of great value, and, but for the infringement hereinafter complained of, your orator would be still in the undisturbed possession, use and enjoyment of the exclusive rights, powers and privileges granted under said patents. That the said complainant has been to a great expense in perfecting said invention and making it available for public use and benefit, and in introducing said patented device to the public and in building up a market therefor; that the superior utility of the said patented device has become generally recognized; that the users of said patented device have universally recognized the utility of said device, and the public has generally acquiesced in the validity of complainant's said patents.

14. And your orator further shows unto your Honors as he is informed and believes, that the said respondent H. J. Heinz Company, well knowing all the facts herein set forth and [6] the rights secured to your orator aforesaid, intending to injure your orator and to deprive him of the benefits and profits which might and otherwise would accrue unto him for such inventions after the issuance of said



several letters patent, and within six years last past, and before the commencement of this suit, and within the Northern District of California, and within the jurisdiction of this Court and elsewhere in the United States, and against the will of your orator, and in violation of his rights and in infringement of said several letters patent and all of the claims thereof, has conjointly used and is now conjointly using the inventions and improvements set forth and claimed in each of the said letters patent by using envelopes which in all parts thereof are substantially the same in construction and mode of operation as the envelopes in said letters patent mentioned and claimed, and threatens to continue said unlawful use; that respondent has made conjoint use of said patented inventions in a single envelope, and still continues to do so in defiance of your orator's rights and to his irreparable loss and injury, and that the acts and doings of said respondent are contrary to equity and good conscience, and to the manifest wrong and injury of your orator; that said respondent threatens and declares it will continue to so infringe upon said patents unless restrained by the process of the Court.

15. That by reason of the premises and the threatened unlawful acts of the respondent aforesaid, your orator has suffered great and irreparable injury and damage, the exact amount of which is unknown, and can be ascertained only by an accounting, and the respondent has realized, as your orator is informed and believes, large gains, profits and advantages from and by reason of said threatened infringement, the

exact amount [7] of which is likewise unknown to your orator and can be ascertained only by an accounting.

That for the wrongs and injuries herein complained of your orator has no plain, speedy or adequate remedy at law, and forasmuch as your orator is without remedy save in a court of equity where matters of this kind are cognizable and relievable.

TO THE END, therefore, that the said respondent may, if it can, show why your orator cannot have the relief herein prayed, and may according to the best and utmost of the knowledge, information, recollection and belief of its officers, but not under oath (an answer under oath being hereby waived) full, true, direct and perfect answer make to all and singular the matter and things hereinabove charged, your orator prays that the said respondent be enjoined and restrained both provisionally and perpetually by an injunction of this court from using said envelope and infringing upon said letters patent, and be decreed to account for and pay over to your orator the gains, profits and advantages realized by it, and in addition thereto the damages sustained by your orator from and by reason of the infringement, actual and threatened, together with costs of court.

May it please your Honors to grant unto your orator forthwith upon the filing of this bill of complaint a writ of injunction issued out of and under the seal of this court provisionally and until the final hearing, enjoining and restraining the said respondent, its agent, servants, attorneys, workmen and employees, and each of them, from making, using or

selling any envelopes containing and embracing the invention claimed and patented in and by said letters patent, and that upon the final hearing of this cause said provisional injunction be made perpetual, and that your orator have such other and further [8] relief as to your Honors may seem meet and in accordance with equity and good conscience.

May it please your Honors to grant unto your orator the writ of subpoena ad respondendum issued out of and under the seal of this court directed to the respondent H. J. Heinz Company, commanding it by a day certain and under a certain penalty fixed by law to be and appear before this Court, then and there to answer this bill of complaint and to stand by and abide by such further orders and decrees as to your Honors may seem meet in the premises.

MAX M. COHN,

CHAS. E. TOWNSEND,

Solicitors for Complainant.

CHAS. E. TOWNSEND,

Of Counsel.

United States of America,  
Northern District of California,  
City and County of San Francisco,—ss.

Max M. Cohn, being duly sworn, deposes and says that he is the complainant in the within entitled action; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge, except as to matters which are therein stated on information or belief, and as to those matters, that he believes it to be true.

MAX M. COHN.



Subscribed and sworn to before me this 28th day of July, 1910.

[Seal]

THOMAS S. BURNS,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed July 28, 1910. Southard Hoffman, Clerk. J. A. Schaertzer, Deputy Clerk. [9]

---

**Subpoena ad Respondendum.**

UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.*

IN EQUITY.

The President of the United States of America,  
Greeting:

To H. J. HEINZ COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, and having an office and a regular place of business in the City and County of San Francisco, State of California.

YOU ARE HEREBY COMMANDED, That you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in San Francisco, on the sixth day of September, A. D. 1910, to answer a Bill of Complaint exhibited against you in said court by Max M. Cohn, who is a citizen of the State of California and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit under the penalty of FIVE THOUSAND DOLLARS.

WITNESS, the Honorable JOHN M. HARLAN, Senior Associate Justice of the Supreme Court of the United States, this 28th day of July, in the year of our Lord one thousand nine hundred and ten and of our Independence the 135th.

[Seal]

SOUTHARD HOFFMAN,

Clerk.

By J. A. Schaertzer,

Deputy Clerk.

Memorandum Pursuant to Rule 12, Rules of Practice for the Courts of Equity of the United States.

You are hereby required to enter your appearance in the above suit, on or before the first Tuesday of September next, at the Clerk's Office of said Court, pursuant to said Bill; [10] otherwise the said Bill will be taken *pro confesso*.

SOUTHARD HOFFMAN,

Clerk.

By J. A. Schaertzer,

Deputy Clerk.

United States Marshal's Office,  
Northern District of California.

I hereby certify that I received the within Subpoena in Equity on the 28th day of July, 1910, and personally served the same upon H. J. HEINZ COMPANY, a corporation, by handing to and leaving an attested copy hereof with N. J. Mitchell, general manager and managing agent in charge conducting the business of H. J. Heinz Co., at their regular established place of business in the City and County of San Francisco, in said District, on the 28th day of

July, 1910. Said service being made personally, and in the manner above stated under instructions from the within named plaintiff.

Dated at San Francisco, California, this 28th day of July, 1910.

C. T. ELLIOTT,  
United States Marshal,  
By T. F. Kiernan,  
Office Deputy Marshal.

[Endorsed]: Filed Jul. 29, 1910. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk.  
[11]

---

[**Answer of H. J. Heinz Company.**]  
*Circuit Court of the United States, Northern District  
of California.*

IN EQUITY—No. 15,204.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY,

Defendant.

The answer of the defendant, the H. J. HINZ COMPANY, to the Bill of Complaint of Max M. Cohn, Complainant.

This defendant, now and at all times hereafter saving and reserving unto itself all and all manner of benefit, advantage and exception that may be had or taken to the many errors, insufficiencies and inaccuracies in the said bill of complaint contained, for



answer thereunto, or to so much and such parts thereof as this defendant is advised it may be necessary to make answer unto, answering says:

1. This defendant admits that the complainant, Max M. Cohn, is a citizen of the United States and a resident of the City and County of San Francisco, State of California, and that the defendant is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, and having an office and a regular established place of business in the City and County of San Francisco, State of California, and a managing agent there conducting the same, in the Northern District of California, as alleged in the bill of complaint herein. [12]

2. This defendant further answering says that as to whether prior to the 8th day of November, 1904, the complainant was the inventor or discoverer of certain alleged new and useful inventions or improvements in envelopes, not known or used by others in this country before his invention or discovery thereof; and as to whether the same had not been patented or described in any foreign country before his invention or discovery thereof; and as to whether the same had not been in public use or on sale for more than two years prior to his application for letters patent therefor and not abandoned; and that as to whether on said 8th day of November, 1904, he made application for letters patent of the United States in accordance with the law and with the rules and regulations in the Patent Office in such cases made and provided; this defendant has no knowledge, except as derived from the bill of complaint

herein and except as hereinafter alleged, and so denies each and every of said matters and calls upon the complainant to make such proof thereof as it may deem necessary or desirable; though this defendant admits that on the 12th day of November, 1906, letters patent of the United States No. 835,850 were issued to the complainant, as in the said bill of complaint alleged.

3. This defendant further answering says that as to whether prior to the 17th day of January, 1905, the complainant was the inventor or discoverer of certain alleged new and useful inventions or improvements in envelopes, not known or used by others in this country before his invention or discovery thereof; and as to whether the same had not been patented or described in [13] any foreign country before his invention or discovery thereof; and as to whether the same had not been in public use or on sale for more than two years prior to his application for letters patent therefor and not abandoned; and that as to whether on said 17th day of January, 1905, he made application for letters patent of the United States in accordance with the law and with the rules and regulations in the Patent Office in such case made and provided; this defendant has no knowledge, except as derived from the bill of complaint herein and except as hereinafter alleged, and so denies each and every of said matters and calls upon the complainant to make such proof thereof as it may deem necessary or desirable; though this defendant admits that on the 3d day of July, 1906, letters patent of the United States No. 824,908 were issued to the complainant,

as in the said bill of complaint alleged.

4. This defendant further answering says that as to whether the said complainant was and is the sole owner of all the right, title and interest in and to said alleged inventions or improvements, and the said letters patent No. 835,850 and No. 824,908, together with all claims and demands in law or in equity for damages and profits accrued or to accrue on account of infringements of said letters patent; and as to whether the alleged inventions or improvements described and claimed in each of said letters patent are capable and are designed for conjoint use in one and the same envelope, and that they are or have been since the issuance of said letters patent conjointly used by the complainant or defendant; and as to whether the complainant has [14] never acquiesced in any invasion of his alleged rights under said letters patent, or either of them; and as to whether all or any of his envelopes made and sold by him have been stamped and printed, or otherwise marked, with the word "Patented," or other words to the same purport; and as to whether the said alleged inventions or improvements described and claimed in said letters patent, or either of them, are of great or any value; or as to whether the complainant has been to a great or any expense in perfecting said alleged inventions or improvements and making them available for public use and benefit, or in introducing said inventions or improvements to the public and building up a market therefor; or as to whether the utility of the said alleged inventions or improvements has become generally recognized so that the users thereof



and the public generally have acquiesced in the validity of said letters patent; this defendant has no knowledge, except as derived from the bill of complaint herein, and so denies each and every of said matters and calls upon the complainant to make such proof thereof as it may deem necessary or desirable.

5. This defendant further answering denies that it has been duly or otherwise notified of the date and grant of said letters patent No. 835,850 and No. 824,908 and of the complainant's alleged rights thereunder; and denies that it has, without the license of the complainant, and in violation of his rights under said letters patent, with intent to injure the complainant, or to otherwise deprive him of the alleged benefits and profits which he alleges might and otherwise would have accrued to him [15] for such alleged inventions or improvements, before the commencement of this suit and within the Northern District of California, or elsewhere in the United States, and in violation of the complainant's rights, and in infringement of said letter patent and of all or any of the claims thereof, used and is now using conjointly or otherwise, the alleged inventions and improvements set forth and claimed in said letters patent, or either of them, by using envelopes which in all or any part thereof are substantially like the same in construction and mode of operation as the envelopes described and claimed in said letters patent, or either of them; and denies that it has threatened or is threatening to continue any unlawful use thereof; and denies that it has made conjoint or other use of said alleged patented inventions or improvements in

a single envelope, and that it continues so to do in defiance or violation of the complainant's rights under said letters patent, or to his irreparable or other loss and injury; and denies that its acts and doings are contrary to equity and good conscience and to the wrong and injury of the complainant, and that it threatens and declares that it will continue to infringe upon said letters patent, or either of them; and denies that the complainant, by any threatened or unlawful acts on the part of this defendant, has suffered great and irreparable, or any, injury and damage.

6. This defendant further answering alleges that said letters patent No. 835,850 and No. 824,908 are, and each of them is, invalid and of no force or effect whatever in law, for the reasons, that the alleged inventions or improvements [16] described and claimed in said letters patent had been invented long prior to the date of the alleged invention thereof by the said complainant; that at the time of said alleged invention by the said complainant nothing more than ordinary mechanical knowledge and skill was required to make said alleged inventions or improvements; that said alleged inventions or improvements did not involve invention and did not possess novelty; were the result of aggregations and not of true or legal combinations; were well known and had been long in public use, and illustrated, described and disclosed in various prior patents of the United States and foreign countries, the numbers and dates of some of which this defendant is now able to give and to mention in this its answer, as follows, namely:

## UNITED STATES LETTERS PATENT.

No. 36,393, September 9, 1862, Brown;  
No. 202,816, April 23, 1878, Hatfield;  
No. 206,701, August 6, 1878, Bligh;  
No. 701,839, June 10, 1902, Callahan.

## BRITISH LETTERS PATENT.

No. 1,807 of 1904, Rose;  
No. 5,949 of 1904, Brown;  
No. 25,986 of 1904, Matheson;  
No. 377 of 1884, Haynes;  
No. 3,885 of 1886, Thomson;  
No. 8,284 of 1888, Jones;  
No. 890 of 1856, Warren;  
No. 2,349 of 1857, Berton;  
No. 685 of 1869, Clark;  
No. 15,736 of 1888, Utting;  
No. 16,243 of 1888, Pope;  
No. 4,465 of 1889, Backe;  
No. 6,287 of 1889, Weight;  
No. 848 of 1890, Strain;  
No. 13,405 of 1893, Schmahl,  
No. 2,339 of 1894, Pescheux;  
No. 10,999 of 1894, Slight;  
No. 21,711 of 1894, Leigh;  
No. 21,718 of 1894, Justice;  
No. 20,040 of 1894, Lunser;  
No. 1,450 of 1901, Perry;  
No. 25,532 of 1901, Smith;  
No. 3,033 of 1903, Minnis;  
No. 4,127 of 1903, Kendrick;  
No. 11,133 of 1903, Pilz;



No. 21,396 of 1903, Katz;  
No. 1,119 of 1861, Johnson;  
No. 2,143 of 1870, Brownlie;  
No. 1,010 of 1886, Brand;  
No. 10,711 of 1887, Parker;  
No. 14,215 of 1887, Smith;  
No. 11,091 of 1888, Hart;  
No. 13,657 of 1888, Brand;  
No. 16,649 of 1898, Gandig;  
No. 24,136 of 1893, Ness;  
No. 23,875 of 1893, Pilz;

[17]

No. 5,418 of 1889, Wise;  
No. 8,594 of 1887, Cunliffe;  
No. 1,251 of 1884, Rydill;  
No. 5,080 of 1884, Cunliffe;  
No. 5,640 of 1882, Clark;  
No. 3,822 of 1883, Rydill;  
No. 5,947 of 1883, Rydill;  
No. 2,345 of 1856, Wilkinson;  
No. 2,943 of 1859, Spilsbury;  
No. 29,956 of 1897, Boulet;  
No. 4,562 of 1900, Janett;  
No. 12,214 of 1902, Callahan;  
No. 6,641 of 1904, Hulme;  
No. 14,478 of 1904, Cohn & Shipp;  
No. 11,876 of 1896, Busch;  
No. 4,465 of 1889, Backe;  
No. 16,649 of 1898, Gandig;  
No. 12,811 of 1899, Paton;  
No. 6,810 of 1894, Canesi;  
No. 3,032 of 1895, Holt;

No. 23,297 of 1896, Zeigenspeck;  
No. 20,667 of 1899, Staples;  
No. 17,126 of 1900, Hofer;  
No. 20,247 of 1901, Patch;  
No. 13,871 of 1903, Breare;  
No. 21,396 of 1903, Katzre;  
No. 23,870 of 1903, Soderbaum;  
No. 27,618 of 1903, Wolfram;  
No. 7,955 of 1895, Watts;  
No. 2,899 of 1869, Whitty;  
No. 1,985 of 1900, Golby;  
No. 1,290 of 1857, Bennett;  
No. 2,349 of 1857, Berton;  
No. 746 of 1894, Hole;  
No. 5,823 of 1884, Peace;  
No. 13,561 of 1884, Howard;  
No. 3,016 of 1890, Wadsworth;  
No. 19,631 of 1891, Constable;  
No. 1,675 of 1900, Smith;  
No. 15,656 of 1902, Broadhurst;  
No. 28,475 of 1903, Krotoschin;  
No. 22,036 of 1904, Schuley.

#### PRIOR INVENTION AND USE.

7. This defendant further answering alleges and states the fact to be that long before the alleged invention or discovery by the complainant of the said alleged inventions or improvements described in said letters patent, the same had been invented or discovered by one Julius Regenstein, of Chicago, Illinois, if any invention was or could have been involved in devising and making said alleged inventions or improvements, and had been put into public use at said

Chicago, Illinois, by George Reese and others, and by the said Julius Regenstein, who resides at 5523 Kenmore Avenue, Chicago, Illinois, and whose place of business is at 735 West Division Street, Chicago, Illinois, and that such public use at said Chicago, Illinois, was known to the said Julius Regenstein and others at said Chicago, Illinois.

8. And this defendant further answering denies the [18] equity of said complainant's bill of complaint, and says that complainant is not entitled to an injunction or an account of profits, or of damages, or of any other relief against this defendant, as prayed for in said bill of complaint; without this, that any other matter, cause, or thing, in said complainant's bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, traversed, or denied, confessed and avoided, is true; all of which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

H. J. HEINZ COMPANY.

By W. H. ROBINSON.

BANNING & BANNING,

Solicitors for Defendant.

THOMAS A. BANNING,

Of Counsel.

WM. A. SULLIVAN,

Resident Solicitor for Defendant.

[Endorsed]: Filed Sept. 27, 1910. Southard Hoffman, Clerk. [19]

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*In the Circuit Court of the United States for the Northern District of California, Ninth Circuit.*

IN EQUITY—No. 15,204.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY,

Defendant.

**Replication.**

This replicant saving and reserving unto itself now and at all times hereafter all and all manner of benefit and advantage of exception, which may be had or taken to the manifold insufficiencies of the answer of defendant, for replication thereto saith:

That it will aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the defendant is uncertain, untrue and insufficient to be replied unto by this replicant, without this that any other matter or thing whatsoever in the said answer of defendant contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed and denied, is true.

All of which matters and things this replicant is now and will be ready to aver, maintain and prove, as this Honorable Court shall direct, and humbly



prays as in and by its said bill it hath already prayed.

CHAS. E. TOWNSEND,

Solicitor for Complainant. [20]

Service of the within Replication admitted this  
3d day of October, A. D. 1910.

BANNING & BANNING,

Solicitors for Respondent.

WM. A. SULLIVAN,

Resident Solicitor.

[Endorsed]: Filed Oct. 3, 1910. Southard Hoff-  
man, Clerk. By J. A. Schaertzer, Deputy Clerk.  
[21]

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At a stated term, to wit, the March Term, A. D. 1912,  
of the District Court of the United States of  
America, in and for the Northern District of  
California, Second Division, held at the court-  
room in the City and County of San Francisco,  
on Monday, the 24th day of June, in the year of  
our Lord one thousand nine hundred and twelve.  
Present: The Honorable WILLIAM C. VAN  
FLEET, District Judge.

No. 15,204.

MAX M. COHN

vs.

H. J. HEINZ COMPANY.

**Order for Decree.**

This suit heretofore heard and submitted being  
now fully considered, and the Court having rendered  
its oral opinion thereon, it was ordered in accordance

with said opinion that a decree in favor of complainant as prayed for in the bill be signed, filed and entered herein. [22]

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*In the District Court of the United States, Northern  
District of California, Second Division.*

No. 15,204.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ, a Corporation,

Defendant.

**Enrollment.**

The complainant filed his bill of complaint herein on the 28th day of July, 1910, which is hereto annexed.

A subpoena to appear and answer in said cause was thereupon issued, returnable on the 6th day of September, A. D. 1910, which is hereto annexed.

The defendant appeared herein on the 5th day of September, 1910, by Banning & Banning and W. A. Sullivan, Esqs., its solicitors.

On the 26th day of September, 1910, an answer was filed herein, which is hereto annexed.

On the 3d day of October, 1910, a replication was filed herein, which is hereto annexed.

On the 24th day of June, 1912, an order directing decree to be signed, filed and entered in favor of complainant was made and entered herein, a copy of which said order is hereto annexed.

Thereafter, a final decree was signed, filed and entered herein in the words and figures as follows, viz:  
[23]

*In the United States District Court for the Northern  
District of California, Ninth Circuit, Division 2.*

IN EQUITY—#15,204.

M. M. COHN,

Complainant,

vs.

H. J. HEINZ, a Corporation,

Respondent.

At a stated term, to wit, the July term of the above-entitled court, held at the courtroom thereof in the City and County of San Francisco, State of California, on the 6th day of August, A. D. 1912. Present: Honorable WILLIAM C. VAN FLEET, District Judge, presiding.

**Final Decree.**

This cause having heretofore come on regularly to be heard upon the pleadings and proofs documentary and oral taken and submitted in the case, and being of record therein, the complainant being represented by Chas. E. Townsend, Esq., and the respondent by Messrs. Banning & Banning, and William A. Sullivan, Esq., and the cause having been duly argued and submitted to the Court for its consideration and decision, and [24] the Court being now fully advised in the premises, and the complainant having waived an accounting, and the parties stipulated in open court that a final decree may be

entered at this time, it is ORDERED, ADJUDGED and DECREED as follows:

That the letters patent sued on herein, to wit, United States Letters Patent No. 835,850, issued on November 13, A. D. 1906, to Max M. Cohn for improvements in envelopes and the claim thereof charged to have been infringed by the respondent is in all respects good and valid in law; that said Max M. Cohn was the original and first inventor of the invention described and claimed in said letters patent, said claim being as follows, to wit:

“As a new article of manufacture, and envelop with an unpunctured face of relatively opaque stock, said envelop-face having a portion to which a preparation has been applied to render such portion transparent, and a colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock.”

That the letters patent sued on herein, to wit, United States Letters Patent No. 824,908, issued on July 3, A. D. 1906, to Max M. Cohn, for improvements in envelopes and the claims thereof charged to have been infringed by the respondent are in all respects good and valid in law; that the said Max M. Cohn was the original and first inventor of the invention described and claimed in said letters patent; said claims sued on and held to be valid and infringed being as follows, to wit:

“1. An advertising device comprising an envelop having a window through which the ad-



dressee's name on an inclosure may show through said window being in outline characteristic of some symbol of trade, a tinted or colored border surrounding and giving definition to said window, and permanent advertising matter forming no part of the address, appearing on said tinted border, and related to and in juxtaposition with the outline of said window.

"2. As an advertising device, an envelop having a [25] generally opaque face except for a transparent window portion through which an addressee's name on an inclosure may show through, said window being in general outline characteristic of a symbol of trade, and permanent printed matter on the face of the envelop related to and in juxtaposition with the outline of the window and co-operating with said outline to indicate a particular brand of goods."

That the complainant, M. M. Cohn, was at the time the Court rendered its decision in said cause on the 24th day of June, 1912, the sole and exclusive owner of each of the said letters patent, together with all claims, demands and causes of action for the past infringement of said patents, and each of them.

That since the issuance of said patents, and each of them, and within six years prior to the commencement of this suit within the Northern District of California, the respondent herein, without license or consent of complainant, has conjointly used the inventions described and claimed in said letters patent and each of them, and has infringed upon each and all of the claims of each of said patents by using the

inventions respectively claimed and patented in and by said several patents and each of them.

And it is further **ORDERED, ADJUDGED AND DECREED** that the respondent, the H. J. Heinz Company, its officers, agents, servants, attorneys, workmen, and employees, be and they are hereby perpetually enjoined and restrained from further making, using or selling any envelopes or devices containing or embodying the inventions respectively claimed and patented in and by each or any of the claims of said Letters Patent #835,850 and #824,-908. [26]

And it is further **ORDERED, ADJUDGED AND DECREED** that the complainant do have and recover of the respondent its costs and disbursements in this suit, taxed by the clerk at the sum of ——— dollars.

This decree shall be as entered on the 24th day of June, 1912.

Dated Aug. 6th, 1912.

WILLIAM C. VAN FLEET,  
Judge.

[Endorsed]: Filed and Entered August 6, 1912.  
Nunc pro tunc June 24, 1912. Jas. P. Brown, Clerk.  
By W. B. Maling, Deputy Clerk. [27]

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### **Certificate to Enrollment.**

WHEREUPON, said pleadings, subpoena, copy of order, final decree, and a memorandum of taxed costs are hereto annexed; said final decree being duly signed, filed and enrolled, pursuant to the practice of said District Court, second division.

Attest my hand and the seal of said Circuit Court  
this 6th day of August, 1912.

[Seal]

JAS. P. BROWN,  
Clerk.

By W. B. Maling,  
Deputy Clerk.

[Endorsed]: Filed August 6th, 1912. Jas. P.  
Brown, Clerk. By W. B. Maling, Deputy Clerk.  
[28]

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*In the District Court of the United States in and for  
the Northern District of California, Second Di-  
vision.*

Hon. WM. C. VAN FLEET, Judge.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY, a Corporation,  
Respondent.

Monday, June 24th, 1912.

Appearances:

CHAS. E. TOWNSEND, Solicitor for Complainant;  
BANNING & BANNING and WM. A. SULLIVAN,  
Solicitors for Respondent.

**Oral Opinion.**

*In the District Court of the United States in and for  
the Northern District of California, Second Di-  
vision.*

Hon. W. C. VAN FLEET, Judge.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY, a Corporation,

Respondent.

Monday, June 24th, 1912.

THE COURT (Orally): This is a suit in equity to restrain the use by the defendant of a certain envelope alleged to infringe the patents of the complainant sued on, numbered respectively 835,850 and 824,908, both issued to the complainant [29] and relating to an envelope commonly referred to in the art as a window envelope; that is, an unpunctured envelope made from generally opaque stock, having a transparent portion on its address side called a window, through which an address placed upon the enclosure may show through, and thus avoid the necessity of writing it upon the face of the envelope,—the window or transparent portion being produced by the application of some oily substance suitable for the purpose of producing the transparency. This window portion is surrounded by a colored or tinted border of opaque ink to give the window definition and cover up an otherwise unsightly and irregular margin produced by the inevitable tendency of the



oily application to bleed or creep into the surrounding opaque portion of the paper.

Patent 835,850, although later in issue, was first applied for and covers the primary form of the invention above outlined.

Patent No. 824,908, which, although later in application, is earlier in issue, is based upon the first as a divisional application, and relates to an envelope such as described in the primary application, but having the window or transparent portion produced in the form or outline characteristic of some symbol of trade, article of commerce or trademark. There is also printed matter of a permanent character appearing upon the face near the window to indicate and attract attention to the brand of goods or article of merchandise designed to be advertised thereby.

The main defense of the defendant, who is a user of the article and not the manufacturer, is that the complainant here was not the first inventor or discoverer of the device or process covered by these patents, but that the discovery was [30] made by and put in use by one Regenstein for the manufacturer, the Transo Paper Company, the party really making the defense here; and a large part of the record is devoted to evidence bearing upon the question as to who was in fact the original designer or inventor of the device. The rule is very well established in such cases that in order to overcome the presumption of validity of the patent and the prior rights thereby protected, the evidence must be such as to satisfy the mind of the Court beyond a rea-

sonable doubt that the patentee was not the original discoverer or designer of the device; and I am fully persuaded, after a very thorough examination of the evidence in this case that it does not come up to the requisite strength to overthrow the primary case of the complainant and the presumption which runs in his favor through the issuance of the patent. It is not necessary, nor would it be of any material benefit, to go into any detailed statement of that evidence. It is somewhat unsatisfactory in certain respects on both sides, but it is such as in my judgment fails to establish this claim of the defense.

The second defense is that there was a want of novelty, by reason of the prior art, in the primary invention;—not perhaps a strict anticipation but a failure to disclose novelty by reason of the existing state of the art. A large amount of evidence is devoted to that subject as well; a considerable number of prior patents were put in evidence for the purpose of sustaining this plea of anticipation or want of novelty. I have examined those features of the evidence very carefully. What is apparently regarded by defendant as the best reference is a patent to one Brown in 1862. That does disclose a glimmering of one feature of the invention that is involved in [31] this first Cohn patent. I should say perhaps, preliminarily, that these Cohn patents are what are known in the patent law as combination patents; that is, they disclose a combination device or process; I think, perhaps, “process” would be the better term, because it is by a process that the articles of commerce are produced. This Brown patent of

1862 discloses in a way an idea approaching one element of the first Cohn Patent; that is, it discloses an idea of a window envelope. This window, however, is unaccompanied by any ring or border, and the calls of the patent are indefinite as to the manner in which the window shall be produced. It says that the transparent portion may be produced in the same way that tracing paper may be produced, while the evidence tends very strongly to show that by the application of that method no successful result would be accomplished, as the means for making tracing paper are such that they cannot be applied for the purpose of producing transparency in simply a portion of the sheet; it must be applied to the entire sheet. Moreover, as I say, the Cohn patent being a combination, the Brown patent entirely fails to come up to an anticipation, because it involves, if it be admitted that that element is disclosed in the Brown patent, nothing but the single feature of this transparent window unaccompanied by the other which I regard as an essentially characteristic feature of the first Cohn patent, a border or ring of opaque ink applied for the purpose of covering up the ragged edge that the evidence discloses inevitably results from the application of the oily substance applied for the purpose of producing transparency.

There is also a British patent issued to one Busch which is pleaded as an anticipation, or, more properly, as an illustration of the state of the art, which it is claimed should preclude [32] a finding of novelty. This patent is claimed to embrace the feature of a ring or border. I am satisfied from my ex-

amination of the record that this claim cannot be sustained. Moreover, the Busch patent involved a device which required for its production a paper entirely transparent; the entire envelope in its primary form was to be made of transparent material, and thereupon the window feature would be produced by covering the entire portion of the face of the envelope other than the window space with opaque ink, thereby resulting in the production of an envelope, the back portion of which would remain transparent, and the transparent opening or window in front, while the balance of the face of the envelope would be entirely in either black or some other dark colored ink which, as the evidence tends to show, produced an unsightly or unattractive effect, and rendered that device very largely an unsalable product; that is, it never was a success, and so far as appears, it has gone entirely out of use, if it ever had any; so that I am unable to regard that as an anticipation of the device embraced in the Cohn patents or either of them.

There was another British patent issued to one Boldt. That is a device which is even broader in its distinctive features from the Cohn conception than the one just suggested. It was a patent secured by Boldt for a method or process of making not strictly an envelope, although the envelope is included within the definition of its terms, but a receptacle or casing or container for goods of any particular character that for the purposes of commerce it should be desired to have done up in packages; and had this transparent window or opening so placed as to disclose the character of the contents of the



package, so that picking up the package you could look through this transparency and see the character of the goods contained therein [33] and it was that feature which seemed to be the principal idea in the mind of the inventor of that device, that is, making a container which would enable the buyer of an article of commerce to readily see what he was getting without breaking the package. It is largely, if not wholly, to my mind, along a different line in its conception than the Cohn patents, and I do not think, either in a primary sense or in its details, can be looked to or regarded as an anticipation of the real feature which is embraced in the Cohn conception. Moreover, it is constructed in a distinctively different manner from the Cohn patent. It is not a one piece receptacle or envelope, but is an envelope or covering having a punctured face, and the puncture or opening is then covered or closed by a separate piece of transparent material of any appropriate character. In that respect it is entirely different from the conception of Cohn, which embodies, as indicated by the claim of the patent—I am speaking now of the first Cohn patent—a single piece, an unpunctured envelope rendered transparent through the application of a substance which is employed for that purpose. This Boldt patent, like the previous one, that of Busch, seems never to have had any successful life, so far as commerce is concerned, and so far as the evidence discloses is not now in use. This window, moreover, which Boldt provided for was likewise unaccompanied by any border or ring for the concealing of the edge. It is true, however, that that was a

method of construction which did not require it, because of the different manner in which the window was produced; but I am entirely satisfied that no one of these so-called anticipations put in evidence subserve the purpose for which they were submitted, and that there is nothing in the prior art which can be regarded [34] as an anticipation of the first Cohn conception, that is the device embraced in the so-called first patent.

It is unnecessary to state, perhaps, with reference to a doctrine so well established, that it is not sufficient, as against a combination patent, to show simply anticipation of some one or more of the different elements of the combination, but not all. The unitary result of the combination is the subject of the patent; and unless you disclose in the art an anticipation of that unitary thing you do not disclose anticipation; and so, whether or not the record does disclose that some one or two features of either one of these devices is anticipated, the evidence entirely fails to show any device which could be taken as an anticipation of the combination of either patent.

It is also urged as against the second Cohn patent, which is also claimed to be infringed by the envelope defendant uses, that it is wholly lacking in novelty and patentability. As indicated, that device is merely a step beyond the primary device covered by the first Cohn patent. It employs the same method for producing the envelope and the transparency, but adds the distinctive feature of changing the form of the window as may be desired to represent a symbol of trade, a trademark, or article of manufacture, ac-

accompanied, as stated, by a permanent printed word or sentence such as may be desired which always remains upon the envelope however used, as purely an advertising feature. It is claimed that this change from the original was purely an advance in the nature of a mechanical difference; that it involved no use of the inventive faculty. I am unable to sustain this contention. I think that the device gives very decided evidence of inventive thought. Inventive thought [35] is not confined, of course, to devices which relate to machinery or things of that kind, but to anything which produces a result in the art or science to which it relates which is of a novel and useful character and which is materially different from that which precedes it. I think that the evidence discloses very clearly that this conception was one which had been sought after for a long period,—something of the kind,—but the real idea occurred to no one to put it into successful form until Cohn seized upon it. I am satisfied that the objection that the second patent does not cover a device which discloses patentability is entirely unsustained by the evidence.

The last defense is that there is a want of infringement in the use of the envelope which the defendant employed because of certain differences in its construction. There is no question made but what it infringes the first Cohn patent, but it is claimed that it fails as an infringement of the second Cohn patent because of certain structural differences. The primary form of the envelope is produced in precisely the same way, through the application to a portion of its opaque face of some transparency producing ma-

terial; the ring or border is applied in precisely the same way and is of distinctive characteristic form; but although accompanied by permanent printed matter, this printed matter instead of being upon the face of the envelope adjacent to the window is printed upon the inside of the back flap of the envelope in such a position that it shows through the window when the enclosure is removed, and not being visible until the enclosure is removed; and the claim is that by reason of this difference, the second Cohn patent, being as claimed a very narrow one, there is not disclosed equivalency in the manner of constructing the [36] defendant's envelope. I am of the opinion that this defense is without merit. Equivalency is always to be found where the same or like result is produced and the function is performed in substantially the same way; and I am quite satisfied that under any just application of the rule bearing upon that question, equivalency would be found in this device which is used by the defendant. This being so, I am satisfied that the defenses must be held bad, and the decree must go in favor of the complainant as prayed.

[Endorsed]: Filed July 26, 1912. Jas. P. Brown, Clerk. By J. A. Schaertzer, Deputy Clerk. [37]



**[Notice of Taking of Testimony.]**

*In the Circuit Court of the United States for the  
Northern District of California, Ninth Circuit.*

IN EQUITY—No. 15,204.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY,

Defendant.

To the Above-named Defendant, and to Banning &  
Banning and Wm. A. *Solicitors* for Defendant.

You are hereby notified that on Thursday morning, November 3, 1910, commencing at the hour of ten o'clock A. M., before the Hon. H. M. WRIGHT, Examiner in Chancery, at his offices in the Courthouse and Postoffice Building, at the corner of Seventh and Mission Streets, San Francisco, California, I will proceed with the taking of testimony on behalf of the above-named complainant to be used on final hearing.

You are invited to be present and cross-examine.

Dated this 19th day of October, 1910.

Yours, etc.,

CHAS. E. TOWNSEND,

Solicitor for Complainant.

Service of copy of the within notice admitted this  
19th day of October, A. D. 1910.

BANNING & BANNING,

Solicitors for Defendant.

WM. A. SULLIVAN,

Resident Solicitor. [38]

**[Testimony.]**

*In Circuit Court of the United States, Ninth Judicial  
Circuit, Northern District of California.*

Before H. M. WRIGHT, Esq., Examiner in  
Chancery.

IN EQUITY—No. 15,204.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY,

Defendant.

BE IT REMEMBERED, that on the 3d day of November, 1910, at my chambers, No. 215, in the United States Postoffice and Court Building, corner of Seventh and Mission streets, in the City and County of San Francisco, State of California, before me, H. M. Wright, Examiner in Chancery in the Circuit Court of the United States for the Ninth Circuit and Northern District of California, personally appeared Max M. Cohn and Frederick E. Maynard, who were produced and examined on behalf of the complaint in the above-entitled cause.

That Charles E. Townsend, Esq., appeared as solicitor in behalf of complainant and William A. Sullivan, Esq., appeared on behalf of defendant.

The following proceedings were had:

**[Stipulations Concerning Taking of Testimony, etc.]**

It is stipulated between the respective parties that the testimony and proceedings in this case before the Examiner H. M. Wright, Esq., may be taken in shorthand by Brainard C. Brown and by him put into typewriting.

It is stipulated between the respective parties that the testimony in the above-entitled cause shall be taken under [39] the 67th and 68th Rules in Equity, as amended, and according to the rules and usual practice of the United States Circuit Court for the Northern District of California, and shall be taken orally by questions and answers, and may be taken down directly on a typewriting machine by a competent stenographer, and thereafter reduced to typewritten form under the direction of the officer in charge of the examination; that where such testimony is taken outside of the Northern District of California, it may be taken before a qualified notary public, or other officer competent to administer oaths, at the place where the testimony is taken, after reasonable notice in writing first served on counsel for the opposing party, which notice shall, when practicable, state the name of the notary or officer before whom the testimony is to be taken, and shall state the place where and time when the testimony is to be taken, and the names and addresses of the witnesses to be examined, and all notices of taking testimony by either party shall be given a sufficient length of time before the taking of testimony to enable counsel to attend from San Francisco or Chicago, if counsel so desire.

2. That the reading and signing of the testimony by the several witnesses are waived.

3. That the defendant is a corporation, as alleged in the bill of complaint.

4. That complete, unabridged copies of the specifications of the United States and foreign patents,

including the drawings accompanying same, printed and distributed by the Patent Offices in this or other countries may be introduced in evidence with the same force and effect as though certified.

Mr. TOWNSEND.—We offer in evidence the two patents here sued on, being Number 835,850, dated November 13th, 1906, envelop, patent issued to M. M. Cohn, and ask that it be [40] marked Complainant's Exhibit "A" (so marked); and patent Number 824,908, dated July 3, 1906, envelope, issued to M. M. Cohn, and asked it be marked Complainant's Exhibit "B" (so marked).

It is further stipulated and agreed that the envelope here offered in evidence is such an envelope as the defendant has used in the Northern District of California, in the City and County of San Francisco, since the issuance of the patent and prior to the filing of the bill.

Mr. TOWNSEND.—This envelope is offered in evidence and will be marked "Complainant's Exhibit "C." [41]

**[Testimony of Max M. Cohn, for Complainant.]**

Examination-in-chief of MAX M. COHN, called on behalf of complainant; sworn.

(By Mr. TOWNSEND.)

Q. 1. Will you please state your name, age, residence and occupation?

A. Max M. Cohn; 12 Monte avenue, Piedmont; paperman; paper business; age, 42.

Q. 2. Are you the complainant in this action?

A. I am.

Q. 3. Are you the patentee mentioned in the two



(Testimony of Max M. Cohn.)

patents?      A. I am.

Q. 4. Do you own those patents?      A. I do.

Q. 5. Have you ever made any assignment or transfer of either of them?      A. I have not.

Cross-examination.

(By Mr. SULLIVAN.)

XQ. 1. With whom are you connected, Mr. Cohn?

A. The Zellerbach Paper Company.

XQ. 2. And how long have you been so connected with the Zellerbach Paper Co.?      A. About 7 years.

XQ. 3. And the Zellerbach Paper Co. carry on an extensive paper business, do they?      A. They do.

XQ. 4. And they deal, among other things, in envelopes?      A. Yes.

XQ. 5. And have been during all the time you have been connected with them?      A. They have.

XQ. 6. How long have you been in the paper business?      A. Seven years.

XQ. 7. So that you were not in the paper business prior to being connected with the Zellerbach Paper Co.? Is that correct?      A. That is right.

XQ. 8. Now, then, had you ever invented any other patents prior to the time that you claim to have invented this particular one?

Mr. TOWNSEND.—We object to that as not proper cross-examination, and [42] as irrelevant and immaterial.

XQ. 9. (By Mr. SULLIVAN.) Mr. Cohn, the Zellerbach Paper Co., you said, deal in envelopes. Don't you know, as a matter of fact, that prior to the time that you applied for a patent in this case an

(Testimony of Max M. Cohn.)

envelope containing a visible window was in general vogue, and used throughout the United States generally, and sold by the Zellerbach Paper Co.?

Mr. TOWNSEND.—We object to that question as not proper cross-examination; and if it is an attempt to prove anticipation, there has been no notice given according to the statute.

XQ. 10. (By Mr. SULLIVAN.) Well, I insist on an answer. Do you decline to answer? (Question read.)

Mr. TOWNSEND.—The question is objected to further as being indefinite as to what is meant.

Mr. SULLIVAN.—I will withdraw the question temporarily, then.

XQ. 11. Prior to the time of your applying for a patent for the envelope heretofore introduced in evidence in this case, don't you know, Mr. Cohn, that envelopes similar in kind to the one introduced in evidence, but differing from it merely in that the visible window part of the envelope was pasted in the envelope, were manufactured throughout the United States, and actually sold by the Zellerbach Paper Co.?

Mr. TOWNSEND.—The question is objected to as not proper cross-examination, and on the ground, further, that the matter is inadmissible if the question is attempted to be anticipatory, as no notice has been given according to the statute; further, that the question is indefinite as to the matter of "similarity," and is further indefinite and an incorrect statement of what the patented envelope is or what

(Testimony of Max M. Cohn.)

the patents cover. If the counsel will indicate the nature of the specific envelope which he may have in mind, the question may perhaps be not only more intelligible, but the witness may be able to answer it.

Mr. SULLIVAN.—I am not asking the witness as to whether or not [43] an envelope having a single sheet of paper for the front was used, but merely whether or not a punctured envelope having a window of visible paper was used. That is what I mean.

Mr. TOWNSEND.—Then, your question eliminates entirely the matter of the unpunctured envelope and the question of the tinting of the border and the anti-creeping preparation?

Mr. SULLIVAN.—At this time, yes.

A. There was an envelope with a hole cut in it, over which a piece of transparent paper was pasted in use.

XQ. 12. Yes; and they had been used for years prior to the time that you filed your application for a patent in this case.

A. No, not for years prior to the time that I filed my application for patent.

XQ. 13. Well, how long then?

A. A very short time.

XQ. 14. Do you know how long it was used?

A. I do not.

XQ. 15. When did you first conceive of this invention, Mr. Cohn?

Mr. TOWNSEND.—We object to that as not proper cross-examination and as having no proper

(Testimony of Max M. Cohn.)

place in the examination at this time.

Mr. SULLIVAN.—I insist on an answer.

Mr. TOWNSEND.—I further object that it is a fishing expedition and that the matter is not proper cross-examination.

Mr. SULLIVAN.—Does the witness decline to answer? A. I can't answer at the present moment.

XQ. 16. You don't know then when you first conceived of the envelope which you claim to have patented?

Mr. TOWNSEND.—The witness has not said that he didn't know.

A. Not at the present time.

Mr. TOWNSEND.—I object to this line of examination as improper cross-examination and as irrelevant and immaterial.

XQ. 17. (By Mr. SULLIVAN.) Prior to the time of filing your application for a patent in this matter had you applied in any other country for a patent on the envelope which you claim was patented to you by the Government of the United States? [44] A. No, sir.

XQ. 18. You had not? Now, there are two patents in this matter, Mr. Cohn, as I understand it. Is that correct? A. Yes.

XQ. 19. Now, will you let me understand what the two patents are?

Mr. TOWNSEND.—The patents are the best evidence as to what they are.

XQ. 20. (By Mr. SULLIVAN.) How long prior to the filing of your application for the patent Num-



(Testimony of Max M. Cohn.)

ber 835,850 was it that you conceived the idea of that patent?

Mr. TOWNSEND.—We object to that as not proper cross-examination and on the ground that it is merely a fishing expedition. The witness has stated that he is not able at this time to recollect when he conceived it.

XQ. 21. (By Mr. SULLIVAN.) Do you decline to answer?

A. My answer is the same as before, that I cannot at this time state the time of conception.

XQ. 22. You don't know whether it was two years or six years or twenty years or one month prior to the time of filing your applications? Is that the way you want to be understood as testifying?

Mr. TOWNSEND.—We object to that as not proper cross-examination and upon the grounds previously stated.

A. It would be necessary for me to go through a great amount of data which I have and consult with some of my witnesses, before being able to answer as to the time of conception.

XQ. 23. (By Mr. SULLIVAN.) Well, you were the person who conceived the patent, were you not, Mr. Cohn? A. Yes, sir.

XQ. 24. And you at this time cannot give us any approximate idea as to how long prior to the time you filed your application in this matter it was that you conceived the idea of this patent?

Mr. TOWNSEND.—We object to the question as not proper cross-examination. [45] The witness

(Testimony of Max M. Cohn.)

has testified that he is the inventor, and the patent speaks for itself. The only question now before the Court is the matter of the envelope alleged to have been infringed, which is admitted to have been used by the defendant. The question is whether that device infringes the claims of the patent sued on. (Question read.)

A. No, sir.

XQ. 25. (By Mr. SULLIVAN.) And your answer would be the same as to the patent number 824,908? Is that correct?

Mr. TOWNSEND.—We make the same objection.

A. Yes, sir.

XQ. 26. (By Mr. SULLIVAN.) What was the first feature of the patent which you conceived?

Mr. TOWNSEND.—We object to that question as not proper cross-examination; furthermore, as indefinite and because the conception is a conception of a combination; that the patent is on the combination; not on any individual feature.

XQ. 27. (By Mr. SULLIVAN.) What is the answer?

A. I don't know just what you mean by the question.

XQ. 28. Well, was the first general feature of the patent conceived nonperforated window?

Mr. TOWNSEND.—We object to that as not proper cross-examination; indefinite; and upon the grounds previously stated.

A. I can't recollect at this time just what the first conception of the patent was.

(Testimony of Max M. Cohn.)

XQ. 29. Have you invented very many patents since the time you invented this particular one—or any patents?     A. Yes, sir.

XQ. 30. How many?

Mr. TOWNSEND.—We object to that as wholly irrelevant and immaterial.

A. I believe two others.

XQ. 31. (By Mr. SULLIVAN.) So that all together you have invented these two patents in this matter, and two others, and yet you can't tell us how long prior to the time you filed your application for the patents in this case you first conceived the idea of the patent, nor are you able to tell us [46] what was the first conception of the patent that you had in this particular case, what feature you first conceived. Is that correct?     A. Yes, sir.

XQ. 32. Are you associated with anybody in England?

Mr. TOWNSEND.—We object to that as not proper cross-examination and as irrelevant and immaterial.

A. No, sir.

XQ. 33. (By Mr. SULLIVAN.) Are you associated with a man named Shipps, in England or in this country?

Mr. TOWNSEND.—The same objection.

A. Not at the present time.

XQ. 34. (By Mr. SULLIVAN.) Were you at the time you filed an application for a patent in this instance, in these two instances, associated with a man named Shipps in connection with this patent?

(Testimony of Max M. Cohn.)

Mr. TOWNSEND.—We object to that as not proper cross-examination, as irrelevant and immaterial, and as having no bearing whatever on the issues in the case. The question is further objected to as indefinite as to what is meant by this patent.

Mr. SULLIVAN.—Very well; I will withdraw the question then.

XQ. 35. Were you at or prior to the time of filing your applications for the issuance of the patents Number 824,908 and 835,850, associated with a Mr. Shipps in the manufacture or in the invention of either of those patents?

A. You are speaking now of the patents before you?

XQ. 36. Yes, sir.      A. No, sir.

XQ. 37. Either in this country or in England?

A. No, sir.

XQ. 38. Were you at and prior to the time of the filing of either of these applications for either of the patents associated with that Mr. Shipps in connection with any patents of an envelope with a visible window, either in this country or in England?

Mr. TOWNSEND.—We object to that as not proper cross-examination; as irrelevant and immaterial; neither patent and neither invention would have any bearing in the issues. [47]

A. Will I answer the question?

Mr. TOWNSEND.—Yes, answer the question. (Question read.)

A. I took out a joint patent with Mr. Shipp, not Shipps; Shipp, in England.



(Testimony of Max M. Cohn.)

XQ. 39. (By Mr. SULLIVAN.) What year was that in, Mr. Cohn?

Mr. TOWNSEND.—I make the same objection; not proper cross-examination.

A. I think in 1904.

XQ. 40. (By Mr. SULLIVAN.) Do you know what time in 1904?

Mr. TOWNSEND.—We make the same objection.

A. I think June or July.

XQ. 41. (By Mr. SULLIVAN.) Yes, sir; that was a patent of an envelope, was it not, with a visible window in front? Is that correct?

Mr. TOWNSEND.—We make the same objection.

XQ. 42. (By Mr. SULLIVAN.) And in many respects it was similar to the envelope for which you afterwards acquired these two patents in the United States? Is that correct?

Mr. TOWNSEND.—That is objected to as not proper cross-examination.

A. No, sir.

XQ. 43. (By Mr. SULLIVAN.) Did the envelope for which you and Mr. Shipp obtained a patent in England have a border on it so designed as to advertise the business or trade of the person using the envelope?

Mr. TOWNSEND.—We make the same objection.

A. No, sir.

XQ. 44. (By Mr. SULLIVAN.) So that had you had at the time you filed your application in England in 1904 in connection with Mr. Shipp for a patent of an envelope having a visible window in front—up to

(Testimony of Max M. Cohn.)

that time you had not conceived the idea of having a border around that visible window advertising the particular character of business in which the man using the envelope was engaged. [48]

Mr. TOWNSEND.—We object to that as not proper cross-examination, as an incorrect conclusion, a wholly incorrect conclusion of the counsel, as the witness certainly has not testified to any such fact; furthermore, the inference is wrong and the question is objected to because the English patent, whatever it may have been, is admitted to have been a joint invention, a joint patent, and the present patents in suit and the inventions therein described are the sole inventions of Mr. Cohn, and it cannot be seen how such a British patent, if one exists, could have any bearing on the present issues,

A. I made no such statement.

XQ. 45. (By Mr. SULLIVAN.) I ask you, then, if up to June or July as you stated, 1904, when you and Mr. Shipp applied for a patent in England for an envelope with a visible window, had you up to that time conceived of the idea of placing a border around the edge of that visible window indicating the particular character of business in which the user of the envelope was engaged?

Mr. TOWNSEND.—We object to that as not proper cross-examination, and as purely a fishing expedition, designed, primarily to shape and color the defendant's later testimony, or those behind the defendant. The question is further objected to on the

(Testimony of Max M. Cohn.)

ground that the witness has testified that he could not at this time testify as to when he did conceive the present invention.

Mr. SULLIVAN.—The witness refuses to testify as to whether it was 10 years or 20 years or one month prior to the filing of his application in this country that he conceived the idea of the envelope in question. I am trying to arrive somewhat approximately near the time when he did conceive the idea.

A. As I stated before, it is impossible for me at this time.

XQ. 46. Do you answer that in that fashion simply because your counsel at this moment called your attention to the fact that [49] you had so testified? Is that your only reason for so testifying now? A. No, sir; my reason is because it is a fact.

XQ. 47. You can't tell us at all then whether or not up to June, 1904, you had conceived the idea of a visible window of the envelope for which you applied for a patent in England or in this country?

Mr. TOWNSEND.—The question is objected to as not proper cross-examination.

A. I can't state at this time.

XQ. 48. (By Mr. SULLIVAN.) You can't state? In what particular features was the envelope for which you and Mr. Shipp in England acquired a patent, different from the envelopes patented Number 835,850 or 824,908?

Mr. TOWNSEND.—We make the same objection; also, that the patents are the best evidence as to the

(Testimony of Max M. Cohn.)

similarity or differences.

A. The English patent covers an envelope made from transparent paper, while the patent in question covers an envelope made from opaque paper which was treated with a preparation to make it transparent, with a colored or tinted border around the same, to obliterate the creeping tendency of the transparent material into the opaque stock.

XQ. 49. (By Mr. SULLIVAN.) Did the patent for which you and Mr. Shipp applied in England for an envelope, have a border around it?

Mr. TOWNSEND.—We object to that as not proper cross-examination.

A. There was no border around those envelopes.

XQ. 50. (By Mr. SULLIVAN.) Now, as I understand your testimony, you are not prepared to tell us whether prior to 1904, when you and Mr. Shipp applied for a patent on an envelope in England somewhat similar to the envelope in question, you had conceived the idea of a border around the window of the envelope indicating the character of the business in which the one who used the envelope was engaged, or not indicating the character of his business? That is the [50] way I understand your testimony?

A. Yes, sir.

XQ. 51. And why was it, then, that when you and Mr. Shipp applied for a patent of an envelope in England similar to the one in question you and Mr. Shipp did not include in that application for a patent a border around the surface of the window indicating the character of the business in which the



(Testimony of Max M. Cohn.)

man was engaged who used the envelope, or not indicating such business?

Mr. TOWNSEND.—We object to that as not proper cross-examination, as irrelevant and immaterial, and the question is objected to on further grounds as speaking of the British patent as being similar to the patents in suit, while such is not the case; and furthermore, that the British patent was for a joint invention, and the present patents are the sole inventions of Mr. Cohn.

A. Firstly, I do not admit that these patents are similar, and consequently there was no need for a border in the English patent, as there was no material used which crept into the surrounding stock.

XQ. 52. (By Mr. SULLIVAN.) One of the features of your patent, Mr. Cohn, is the advertising of the border around the envelope, is it not?

A. Yes, sir.

XQ. 53. And notwithstanding the fact that one of the features of your patent is the advertising portion, as indicated by the border around the edge of the window, you did not include that in your alleged patent in the application which you and Mr. Shipp took out in England? Is that correct?

A. Yes, sir.

XQ. 54. Are you a member of the firm of Zellerbach and Company?

A. I am secretary of the firm.

XQ. 55. It is a corporation, is it not?

A. Yes, sir.

XQ. 56. And you are the owner and holder of

(Testimony of Max M. Cohn.)

capital stock of that corporation, are you not?

A. Yes, sir.

XQ. 57. Has Zellerbach & Co. any interest whatever in any of these patents? A. No, sir.

XQ. 58. By whom are the patented envelopes manufactured? [51]

A. What patented envelopes?

XQ. 59. The ones in suit here, 835,850 and 824,908.

A. They are not being manufactured at the present time.

XQ. 60. By whom have they been manufactured?

A. I manufactured them myself.

XQ. 61. I beg pardon.

A. I have had them made in various factories, different places.

XQ. 62. Have you had them manufactured by Zellerbach & Co.? A. No, sir.

XQ. 63. Does Zellerbach & Co. do any manufacturing of envelopes?

A. They make some hand-made envelopes. I want to correct the other answer here. The manufacturing department of the Zellerbach Paper Co. have folded some of the envelopes made under my patent.

XQ. 64. You say those envelopes are not being manufactured at the present time?

A. The envelopes under my patent are not being manufactured at the present time.

XQ. 65. They are not being manufactured by

(Testimony of Max M. Cohn.)

yourself and are not being manufactured by the Zellerbach Paper Co.?

A. What I meant to convey by my answer that the envelopes are not being manufactured at the present time is that they are not being manufactured with the consent of the patentee.

Mr. SULLIVAN.—I move to strike out the answer as not responsive to the question. (Question read.)

A. What do you mean by “these envelopes”?

XQ. 66. The envelopes patented or the alleged patented envelopes Numbers 835,850 and 824,908.

A. They are now being manufactured—

Mr. SULLIVAN.—I will call the witness’ attention to the fact that he is obliged to testify to matters of his own knowledge.

A. They are now being manufactured and used extensively throughout the United States by an infringer of the patent. [52]

Mr. SULLIVAN.—I move to strike out the words “by an infringer of the patent” as not responsive to the question and as a conclusion of the witness.

XQ. 67. Have you made any assignment of either of these patents to Zellerbach & Co., a corporation, or to any person, firm or corporation? A. No, sir.

XQ. 68. Have you any agreement or understanding with Zellerbach & Co., a corporation, or with any other person, firm or corporation whereby you hold these patents for either of them in trust for such person, firm or corporation? A. No, sir.

XQ. 69. At the time of making application for

(Testimony of Max M. Cohn.)

these patents had Mr. Shipp, with whom you had applied for a patent in England, any interest in these patents or either of them?     A. No, sir.

XQ. 70. Did Mr. Shipp work with you jointly in the preparation of either of these envelopes for which you obtained patents in the United States, or in the preparation of the application for either of these patents?     A. No, sir.

XQ. 71. Where does Mr. Shipp reside?

A. I think he resides in Berkeley.

XQ. 72. How long has he resided there?

A. I don't know.

XQ. 73. Has he resided there during the entire seven years during which you have been connected with Zellerbach & Co., a corporation?     A. No, sir.

XQ. 74. Is he at the present time employed by Zellerbach & Co., a corporation?     A. No, sir.

XQ. 75. Was he employed by Zellerbach & Co., at any of the times during which you were engaged in the manufacturing or in the invention of these envelopes?     A. No, sir.

XQ. 76. During the year of 1904, when you and he applied for a patent of an envelope in England, where did he reside?

A. He resided in San Francisco; I think.

XQ. 77. Yes, sir. During that same period of time where did you [53] reside?

A. In San Francisco.

XQ. 78. Yes, sir. During the year of 1904 was Mr. Shipp employed by Zellerbach & Co.?

A. No, sir.



(Testimony of Max M. Cohn.)

XQ. 79. Was he engaged in work there?

A. No, sir.

XQ. 80. During the year of 1904, when you and he prepared the envelope on which you afterwards acquired a patent in England, did you work together at any particular place in the preparation of that patent?

Mr. TOWNSEND.—We object to that as not proper cross-examination, irrelevant and immaterial.

A. I don't know what you mean by working together. If we worked in the same place?

XQ. 81. (By Mr. SULLIVAN.) No, I mean, had you any joint work room or anything of that character in which you and he prepared the envelopes for which you afterwards acquired the patents?

A. No, we had no such joint room.

XQ. 82. Subsequent to 1904, when the British patent was obtained, did you and Mr. Shipp engage in any further enterprise in connection with the invention of any patents?

Mr. TOWNSEND.—We object to that as not proper cross-examination, irrelevant immaterial and indefinite.

A. No further enterprise.

XQ. 83. (By Mr. SULLIVAN.) What are Mr. Shipp's initials? Do you know? A. J. C.

XQ. 84. J. C. S-h-i-p? A. p-p. [54]

Redirect Examination.

(By Mr. TOWNSEND.)

RDQ. 1. Have you granted any right or license to

(Testimony of Max M. Cohn.)

the respondent to use your patented envelopes?

A. No, sir.

RDQ. 2. Is the use of the envelopes represented by Exhibit "C" of the defendant with or without your consent? A. Without my consent.

RDQ. 3. Are the alleged infringing envelopes made with or without your consent?

A. Without my consent.

RDQ. 4. On the envelopes manufactured by you did they bear the date and number of your patents?

A. They were marked "patent applied for." [55]

**[Testimony of Frederick E. Maynard, for  
Complainant.]**

Examination-in-chief of FREDERICK E. MAYNARD, called on behalf of complainant; sworn.

(By Mr. TOWNSEND.)

Q. 1. Will you please state your full name, age, residence and occupation, Mr. Maynard?

A. Frederick E. Maynard; residence, Berkeley; age, 32; by occupation I am a patent solicitor, and engaged in the drafting of specifications for patents, drawings, sketching out very frequently from the oral description of inventors, their inventions; making the official drawings for the same—

Q. 2. I was going to ask you in connection with your occupation, what experience have you had to make you familiar with patent specifications and claims and drawings, if you have had such experience?

A. For the past ten years I have devoted all my

(Testimony of Frederick E. Maynard.)

time to the preparation and filing of applications for patents in the United States Patent Office.

Mr. SULLIVAN.—I will admit that the witness is fully qualified.

Q. 3. (By Mr. TOWNSEND.) Have you read and do you understand the two patents here in suit?

A. I have.

Q. 4. Have you made any comparison of those patents with the alleged infringing envelope used by the respondent and entitled as exhibit "C"?

A. I have very carefully compared the patents together, and the subject matter of each, and the alleged infringing envelope.

Q. 5. I show you a bottle with a label and ask you if you know what that is, Mr. Maynard?

A. The bottle here presented is one of the articles manufactured by the Heinz Company, bearing the well-known symbol of trade in the shape of a pickle, associated with the word "Heinz." Sometimes also associated with the words "57 varieties," this particular trademark being a prominent and well-known one to the public and by which the goods of the Heinz Company can be at once detected. [56]

Mr. TOWNSEND.—I offer in evidence the bottle just referred to, with the lower label of the Heinz Company, and ask that it be marked Complainant's Exhibit "D."

Mr. SULLIVAN.—We object to it as incompetent, irrelevant and immaterial.

(So marked.)

Q. 6. (By Mr. TOWNSEND.) Now, Mr. May-

(Testimony of Frederick E. Maynard.)

nard, I wish you would take the two patents here in suit, being Complainant's Exhibits "A" and "B," and the envelope, exhibit "C," which is claimed to be an infringement and describe the patents, making such comparison as you wish, between the envelope exhibit "C" and the patents, and with special reference to each of the claims of the patents sued on, and making such other reference as you wish to any other exhibits in the case.

A. Referring to Number 835,850 granting to M. M. Cohn a patent for an envelope, which appears to have been filed November 8, 1904, and to the patent Number 824,908 to the same patentee, M. M. Cohn, also for an envelope, which is marked "original application filed November 8, 1904, Serial Number 321,886. Divided, and this application filed January 17, 1905"; these two patents each on their face are for envelopes, and the quotation referring to the division of the parent patent Number 835,850 would indicate that a portion of the subject matter of the first patent, the parent patent, was reserved to be the subject matter of a later application which eventually issued as Number 824,908, and being filed January 17, 1905. The parent patent, issued November 13, 1906, states, beginning at line 8, page 1:

"My invention relates to an improved envelope of the type having a generally opaque surface with a more or less limited transparent area for the addressee's name and address to show through.

The object of my invention is to provide an



(Testimony of Frederick E. Maynard.)

unpunctured envelop of this character which shall be simple and cheap to manufacture, practical in every way, and which shall offer novel and unique possibilities for advertising." [57]

The figures of the accompanying drawing in this patent are described as comprising, first:

"Figure 1 shows an envelop embodying my invention, in which I employ a tinted or colored border around the window-opening to cover up signs of 'creeping' or 'bleeding' of the preparation into the surrounding body of the paper. Fig. 2 represents an envelop with a different-shaped opening from that of Fig. 1 and in which the entire face of the envelop around the window is assumed to have been imprinted or colored to give definition to the window-opening and obliterate signs of 'creep' in the transparency-producing preparation."

Fig. 3 of the drawing particularly shows a window designated by the reference character 2, in this instance the outline of a pickle, and above—

Q. 7. Just a moment, Mr. Maynard. Is it a fact that the matter of figures 3 and 4 really form the subject matter of the second patent? If so, I would ask you to treat each patent with particular relation to the subject matter covered and claimed by it. Continue your explanation.

A. This figure 3 of the parent patent is actually embodied in the drawing of the junior patent as shown in Fig. 1 of said patent. The parent patent,

(Testimony of Frederick E. Maynard.)

Number 835,850, states in the body of its specifications, beginning at line 39, page 1:

“In carrying out my invention I take a blank sheet of paper or an envelop-blank of suitable strength and texture which is, say, semi-transparent and apply to a portion of one side of the blank, generally on the inside, a preparation which has the property of rendering transparent the portion to which it is applied. The remaining portion or a part of the remaining portion of the blank which forms the face of the finished envelop A is then imprinted with a suitable opaque coloring-matter.”

The patent further states, in line 51: “I employ a compound or preparation, such as paraffin-oil and resin or a grease, which produces the desired result of rendering a semi-transparent paper transparent.” The patentee does not state that he uses any particular or designated compound, and obviously intends that the preparation or compound for producing the effect of rendering transparent the opaque paper of which the envelope is formed may be of any suitable nature. He further states, in line 54:

“This preparation is stamped on or printed on or otherwise applied to the blank to provide the transparency or window of [58] the desired design, and it is applied to such parts of the blanks where the transparency is desired to appear on the face of the envelope and it may cover a larger or a lesser space according to the desired size of the transparency or window.”

(Testimony of Frederick E. Maynard.)

I am reading substantially all of the specification, for the purpose of making clear the reference to the claims which will be made hereafter and which will be better understood by referring to those portions of the specification at the present time.

“Since the oily preparation has a tendency to creep or ‘bleed’ beyond the borders of the space imprinted by the stamp or die by which it is applied, and so possibly stain or discolor the rest of the envelop or give a ragged appearance to the window-opening, it is preferred, even where the paper might ordinarily be deemed sufficiently opaque, to apply some sort of coloring-matter at least around the immediate borders of the transparency. This coloring-matter may be applied solid over the face of the envelop around the window, as in Fig. 2, or it may take the form of graduated tints or of being shaded, or the representation of a surrounding cloud effect, as indicated in Fig. 1. In any event the effect and object of the colored border is to give definition to the window-opening and obliterate or cover up the otherwise rough unfinished outline of the window resulting from the encroachments of the oil or grease or other substance beyond its desired limits.”

In line 85 of page 1 the inventor states:

“Usually, and perhaps preferably, the preparation and coloring-matter are applied on opposite sides of the blank, the preparation on the

(Testimony of Frederick E. Maynard.)

inside and the coloring on the outside.”

Further in line 89, the patent states:

“Developing out of this idea of making an unpunctured envelop with a window or transparency for the addressee’s name to appear through is the idea of changing the form or outline of this transparency to correspond with the trademark, design or advertised object of a merchant, manufacturer, advertiser or other person, company or firm.”

This portion or particular paragraph in the specification is further treated more elaborately in the junior patent Number 824,908, and will be considered by me when I come to that patent. It is sufficient to state here, in connection with this parent patent, that the patentee intended to disclose that a particular feature in connection with a window which in general outline is characteristic of a symbol of trade could be used, just as well as an article of manufacture [59] which would be available as an advertising medium. The patent states, in line 15, page 2:

“Where the window-opening is formed by the application of a grease or equivalent compound to the envelop-blank, the colored or shaded borders is essential to the production of a window of properly-defined outline.”

The only claim in this patent Number 835,850 reads as a whole, as follows:

“As a new article of manufacture, an envelop with an unpunctured face of relatively opaque



(Testimony of Frederick E. Maynard.)

stock, said envelop-face having a portion to which a preparation has been applied to render such portion transparent, and a colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock."

The envelope of exhibit "C" is manifestly one made of opaque stock having an unpunctured face, "said envelop-face having a portion to which a preparation has been applied to render such portion transparent"; this portion of the envelope to which reference is made in this claim is clearly apparent as being the only transparent portion of the envelope, and by examining the inside of the envelope, and particularly, examining the line of contact between the relatively opaque portion of the border of the envelope and that portion which is rendered transparent, a distinct irregular line is found, thus indicating that a material has been applied to the stock of which the envelope has been made, to render a portion of the envelope transparent. Continuing in the claim we find that it calls for:

"A colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock."

The envelope exhibited, and which may well be called the Cohn envelope, in view of its precise conformity to the terms of this claim—

(Testimony of Frederick E. Maynard.)

Mr. SULLIVAN.—I wish to strike out that last statement as a conclusion of the witness.

A. (Continuing.) —has a “colored or tinted border,” precisely [60] as the claim designates, “surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock.” A casual examination of the envelope clearly discloses the unsightly effect produced by the irregular line of contact which is the result of the application of the preparation to render transparent the opaque envelope; and unless this irregular disfiguring line were in some wise obliterated, the article would be a rough, unfinished, disfiguring thing. To overcome this unsightliness the patentee has provided for the application of a colored or tinted border to surround said transparent portion, for the very purpose of obliterating or concealing the tendency to creep, of the preparation into the body of the envelope. The object of the invention, as before stated, is to provide an unpunctured envelope of this character which would be simple and cheap to manufacture and particularly practicable in every way. The envelope, exhibit “C,” would be unsightly and disfiguring on account of the impossibility of forming a perfectly symmetrical or regular line of contact between the preparation effecting the transparency, and the body of the border of the envelope. As stated, in any event, the effect and object of the colored border is to give definition to the window-opening and obliterate or cover up the otherwise rough,

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unfinished outline of the window, as stated by the patent. It is clearly apparent that the designer of the exhibited envelope must have had actual knowledge of the Cohn envelope in applying the material to render transparent a portion of the envelope, and also when he designed the pickle-shaped, tinted border to cover the creep of the preparation applied to the envelope. The Cohn patents each disclose a form of window rendered transparent, having a border representing a pickle.

Q. 7. (By Mr. TOWNSEND.) Is it apparent from exhibit "C" on which [61] side of the window the transparency-forming preparation is applied to the face, and on which side the obliterating border is applied?

A. I think I stated in the answer that the preparation to render transparent a portion of the envelope is applied on the inside of the face of the envelope, exhibit "C," and that the colored or tinted border is applied on the outside of the envelope.

Q. 8. Is that according to the directions of the patent or not?

A. Precisely following the terms or specification of the patent.

Q. 9. Do you find then that the defendant has produced any different results or effects from that outlined or claimed in the first patent, 835,850?

A. The defendant has not produced any different effect or result or performed any different method of arriving at a means for covering the line of creep, and has actually applied a preparation to render

(Testimony of Frederick E. Maynard.)

transparent a portion of the envelope to form a window through which the address on an enclosure may be seen, and has also utilized precisely the same instrumentality for covering the creep of the preparation into the body of the envelope as the patent of Cohn sets forth. The means by which this covering of the creepage is obtained being by the application on the outside of the envelope of a tinted border. The patent to Cohn calls for the application on the outside of the envelope upon the border surrounding said transparent portion for the purpose of concealing the effects of the tendency of such preparation to creep.

Q. 10. When you say that the patent calls for that application, do you mean that the description sets forth the application, or does the claim set forth the application of the border on the outside?

A. The specification sets forth the border and it is also an element of the claim.

Q. 11. What I meant was, that while the border is an element of the claim you have stated that the patent claims the application of the border on the outside. Is not that simply set [62] up in the specification as the preferable way of applying the border on the outside of the transparency-produced model on the inside face of the envelope? I call your attention particularly to lines 85 and following, of page 1 of the patent.

A. The specification of the parent patent No. 835,850 as before quoted, states:

“Usually, and perhaps preferably, the prep-



(Testimony of Frederick E. Maynard.)

aration and coloring-matter are applied on opposite sides of the blanks, the preparation on the inside, and the coloring on the outside."

Q. 12. That, you say, is what you find the defendant to have done?

A. The defendant, as shown by exhibit "C," clearly has applied the preparation to render transparent the opaque body of the envelope on the inside of the same, and the defendant's envelop, exhibit "C" also most certainly shows a tinted border, formed particularly in the shape of a pickle as printed on the outside of the envelope.

Q. 13. (By Mr. SULLIVAN.) When you say that the defendant has applied these transparent preparations and when you use that language throughout this entire explanation, you mean that the person manufacturing that envelope has done that, not that the defendant has done it? Because you don't pretend to say that the defendant has manufactured these envelopes?

A. No, hardly that the defendant has manufactured these envelopes, but that the defendant uses these envelopes is shown by that exhibit.

Q. 14. And that the defendant employs the various persons? A. Yes.

Q. 15. (By Mr. TOWNSEND.) The envelope, exhibit "C," as you have stated, contains on the body of the envelope a combination of the claim of this patent 835,850.

A. I have so stated. I find in the envelope marked exhibit "C," all of the claim of the patent No. 835,850

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in precisely the same relation, operating in precisely the same manner or mode to effectuate the single result of obliterating the creeping of the preparation. [63]

Q. 16. The envelope exhibit "C," then, you say independent of its mode of manufacture embodies those elements of that claim? A. It does.

Q. 17. Now, take up the other patent on the same line, Mr. Maynard.

A. Taking up exhibit "B" patent 824,908, and which has before been referred to as a division of the original patent 835,850, we find that this patent is also for an envelope, and that the object of this patent is stated in line 14 and the following, that:

"The object of this invention is to so design the window-opening and to associate with said window such descriptive matter as will offer novel and unique possibilities for advertising."

The parent patent in its body stated that the envelope as called for might be used as an advertising envelope, and evidently the original claims of that patent included claims for the article as an article of manufacture particularly adapted for advertising purposes.

Q. 18. Just confine your testimony, Mr. Maynard, to the patents before you, not to the cause for the division. Although no doubt your suggestion may be correct, it is not important to the matter immediately in hand.

A. The subject of this particular patent, then, is for the holding to the patentee of an envelope pre-

(Testimony of Frederick E. Maynard.)

pared with a transparent window and bearing such descriptive matter as will form novel and unique possibilities for advertising. The description of the figures in this patent No. 824,908 is "Figures 1 and 2 show my invention in its application to specific brands of goods." The patent then states that the patentee takes a blank sheet of paper or envelope-blank of suitable strength and texture which is, say, semi-transparent—

Q. 19. That descriptive matter then is the same as the descriptive matter which you have taken up and considered in the first patent, is it not?     A. Yes.

Q. 20. So just consider in this patent now before you, exhibit [64] "B," the matter which is material to what you say and what the patent says are the novel and unique possibilities for advertising.

A. —thus forming an envelop having a window which may be rendered transparent, and surrounding the transparent window with a border of any suitable outline, and in order to utilize the border of the window opening to the most advantage, he designs to form the border of any suitable outline, and especially in the outline of some symbol of trade or article of manufacture and to associate with this special outline of the border, other advertising matter, the association of which advertising matter and the peculiar outline of the window when associated, instantly calls to the mind of the observer well known firms using the associated outlines and the names which appear on the face of the envelop. The patent, in line 74, states: "Usually, and perhaps

(Testimony of Frederick E. Maynard.)

preferably, the preparation and coloring-matter are applied on the opposite sides of the blanks," as we find them applied on the exhibit "C," "the preparation on the inside and the coloring on the outside" also shown on the exhibit marked "C." Further quoting from the patent we find:

"Developing out of this idea of making an unpunctured envelop with a window or transparency for the addressee's name to appear through is the idea of changing the form or outline of this transparency to correspond with the trademark, design, or advertised object of a merchant, manufacturer, advertiser or other person, company or firm."

The exhibit was apparently designed by a person having full knowledge of the Cohn patent.

Mr. SULLIVAN.—One minute; I move to strike that out as being a conclusion of the witness.

Q. 21. Mr. TOWNSEND.—Do you mean that in your opinion that the designer of exhibit "C" had simply the knowledge that everyone is presumed to have of patented articles or that he had before him actual specifications and drawings of the Cohn patents when getting up this exhibit "C"?

A. Unquestionably the designer of the envelop marked exhibit "C" had before him the [65] Cohn patent and saw the pickle outline on the patent in association with the printed name, as he has applied to the envelop exhibit marked "C," the outline of a pickle printed on the outside of the paper, as called for by the specification. The patent states that:



(Testimony of Frederick E. Maynard.)

“The number of shapes this transparency may make is almost limitless. Different people might use an envelope with a window in the shape of an oyster, a fish,” and so on, and in fact different people might use an envelop on which the tinted border was in the shape of pickles of different outlines; that is, the designer of the tinted border might make an irregular, relatively curved form of a pickle, or the designer could use a symmetrical pickle.

Q. 22. Possibly, Mr. Maynard, you would include in the class “pickles” a cucumber?      A. Yes.

Q. 23. Whether or not it happened to be specifically so mentioned in the patent?

A. Yes. And if the designer of the envelop proposed to use a pickle outline in the form of the well-known trade symbol used by the Heinz Company and bearing the outline of the Heinz pickle or of the pickle shown on the Cohn envelop, he has still utilized precisely the same means for obtaining the result in advertising. In line 86 the following quotation: “Figure 1 shows a transparency in the shape of a cucumber, the trademark of a well-known manufacturer of a great many varieties of goods.” The envelop marked “C” shows certainly a transparency in the shape of a cucumber which is well known as the trademark of a manufacturer of a great variety of goods, and the patentee has clearly disclosed an envelop having a transparency in the form of a pickle and which is further associated with a pickle-shaped window the fictitious designation “John Doe,” and below the pickle appears the phrase “57 Varieties,”

(Testimony of Frederick E. Maynard.)

thus clearly indicating that the designer of the Heinz envelop marked exhibit "C" was aware of the existence of the patent and probably had it before him in designing the envelop and used to [66] good advantage the trademark in the outline of a cucumber as stated in the specifications. Manifestly the patentee is not confined to the use of a pickle-shaped window nor to the use of a pickle-shaped window of any specific outline; and if the designer of the Heinz patent has proposed to bodily adopt a pickle from the Cohn patent, a slight variation of the outline of the pickle is immaterial. The essential feature, as stated by the patent in this connection is a "window which in general outline is characterstic of a symbol of trade"; and the Heinz envelop marked exhibit "C" bears the well-known symbol of trade in the form of a pickle. The patent states, line 90:

"Fig. 2 shows a cigar in transparency and the words 'Blanco Cigar' in nontransparency on colored opaque field. The number of shapes this transparency may take is almost limitless."

Thus indicating that the patentee was well aware of the unlimited applications and variations to which the outline of the window was adaptable. The patent states:

"Different people might use an envelop with a window in the shape of an oyster, a fish, a cake of soap, and other toilet articles, a cascade, a dress shield, a biscuit, an article of hardware, and other articles of manufacture, and so on in-

(Testimony of Frederick E. Maynard.)

definitely, having due regard for the necessary size of the transparency, so as not in any way to interfere with the clear showing up of the addressee's name inside, the essential feature in this connection is a window which in general outline is characteristic of a symbol of trade. By 'symbol of trade' is meant any design such as mentioned above or trademark characteristic of certain goods or the product of a certain manufacturer."

The exhibit "C" certainly then involves a transparent window which is the shape of the symbol of trade here shown as a pickle, of a well-known manufacturer, and which symbol of trade is applied to a great many varieties of that manufacturer. Continuing the quotation from the patent, I find on line 110, page 1:

"when the window-opening is formed by the application of grease or equivalent compound to the envelop blank the colored or stained window is essential to the production of a window of properly defined outline."

On line 5 of page 2, we find: [67]

"I thus produce a most unique and at the same time inexpensive and effective advertising medium. Everyone needs envelops. These advertising-envelops can be made at small expense. They can be made of any shape or size and made to fit the stationary rather than the stationary made to fit the envelop. They can be used not only for mailing, but for sending out circulars

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and the like by messenger. The characteristically-shaped window and the associated letters and colored background constitute a most striking advertisement to attract public attention, the object of all advertising. I do not wish, however, to limit myself in the application of this idea of an envelop having a window which outline is characteristic of a symbol of trade to envelops made originally from non-transparent stock, as above described, for I may employ a transparent stock and form the window opening by printing with or otherwise applying opaque coloring matter to a portion of the envelop."

Further, quoting from line 28, page 2, the patentee states:

"Generally the window-opening by itself alone and unassociated with any descriptive matter or words forming an essential feature of the trademark would have very little significance as referring to a particular manufacturer. For instance, a window in the outline of a bolt might refer to many bolt manufacturers, or a window in the shape of a cigar unassociated with a trade name would be meaningless; but when there is associated with the window-opening of characteristic or peculiar design a trade name or some word or words usually associated with or relating to the pictorial feature, every one seeing the envelop is confronted with a striking advertisement of a particular brand of goods of a particular merchant or firm."



(Testimony of Frederick E. Maynard.)

Attention is directed to the exhibit marked "C," which bears the well-known outline in the form of a pickle, which is instantly associated with the name of Heinz as its well-known trademark, but without the association of the word Heinz on the border of the envelop the pickle-shaped window would be insignificant. And it is therefore the object of the party to associate with the pickle-shaped window some inscription or name so as to instantly direct the mind of the observer to the firm employing that trademark, which is shown here as being the Heinz pickle combination in which the pickle is formed around the opening and the word "Heinz" spread upon the envelop. The specification, line 44, page 2, further states:

"At the same time the envelop not only performs its ordinary function as a closure, but the transparent portion of the envelop allows the name and address on the enclosure to show through, protects the writing thereon, and obviates the necessity for an address on the exterior of the envelop."

Q. 24. Does the defendant's device do that? [68]

A. The defendant's envelope, exhibit "C," performs precisely the same function in precisely the same manner as the transparent portion—allows the name or address printed on the enclosure to show through; the envelope is un mutilated and the transparency is so formed as to allow a ready reading of the address, and is so bound with an outline and provided with a printed designation so that the asso-

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ciation of the outline of the window—in this instance the pickle and the word “Heinz”—will instantly call to mind that the envelope is an advertisement for the Heinz Company, inasmuch as it bears the Heinz pickle-shaped trademark. Referring to the claim, Claim 1 states: “An advertising device comprising an envelope.” I find this element of the claim in its entirety in the exhibit marked “C” of the defendant. Further, the claim calls for “an envelop having a window,” which is clearly shown on the face of the envelop, “through which the addressee’s name on an enclosure may show through through,” and the window is specified in the claim as “being an outline characteristic of some symbol of trade.” The envelop—

Mr. SULLIVAN.—We admit that exhibit “C” does contain those features; that is, that it has “a window through which the addressee’s name on the enclosure may show, said window being in outline characteristic of some symbol of trade, a tinted or colored border surrounding and giving definition to said window, and permanent advertising matter forming no part of the address, appearing on said tinted border, and related to and in juxtaposition with the outline of said window.” Is that what you want?

Mr. TOWNSEND.—You concede that the entire combination of Claim 1 is shown in exhibit “C”?

Mr. SULLIVAN.—We concede that the exhibit does show that.

The WITNESS.—(Continuing.) Claim 2, taken as a whole calls for:

“As an advertising device, an envelope hav-

(Testimony of Frederick E. Maynard.)

ing a window through which the addressee's name on an enclosure may show through, said window being in outline characteristic of some symbol of [69] trade, and permanent printed matter on the face of the envelop related to and in juxtaposition with the outline of the window and co-operating with said outline to indicate a particular brand of goods."

Taking exhibit "C," the defendant's envelop, the envelop comprises "a generally opaque face except for a transparent window portion through which an addressee's name on an enclosure may show through," the window of the envelop here marked exhibit "C" being formed "in general outline characteristic of a symbol of trade"; the exhibit marked "C" in this instance is in the outline of the symbol of trade of the well-known manufacturer, the Heinz Co., this symbol of trade being in the form of a pickle. The pickle-shaped window portion of the envelop is disclosed by the Cohn patent. And further, the claim calls for "permanent printed matter on the face of the envelop related to and in juxtaposition with the outline of the window and co-operating with said outline to indicate a particular brand of goods." The exhibit "C," then, not only embodies the window having a general outline characterizing a symbol of trade, here shown, as the pickle, illustrated in the Cohn patent, but it also associates with the outline of the pickle the firm name, thus instantly by the association of the pickle outline and the name of the firm, the firm is advertised by reason of the fact that the public mind

(Testimony of Frederick E. Maynard.)

is at once attracted to its well-known trademark. The patent discloses an envelope having a generally opaque face through which an addressee's name on an enclosure may show, and the patent states that the outline of the window may be characteristic of a symbol of trade, and the second claim of the patent also calls for printed matter on the face of the envelop related to and in juxtaposition with the outline of the window and co-operating with said outline to indicate a particular brand of goods. Manifestly, then, the Heinz Company has utilized this means of advertising by forming in its envelop a transparent window as specified by the Cohn patent No. 835,850, and has associated with the pickle trademark its [70] name for the purpose of arousing the interest of the public.

Q. 24. (By Mr. TOWNSEND.) In exhibit "C" what is the permanent printed matter that carries out the purpose and object of the last-quoted clause of claim 2?

A. In exhibit "C" the printed matter appears in the words on the face of the envelop, "H. J. Heinz Co." and including further matter relative to the return of a letter by the postoffice; and the exhibit also bears on the printed envelope simply the word "Heinz" as would naturally be used by the company for its advertising, in juxtaposition to and in association with the transparent window so that when the envelop has been circulated the word "Heinz" and the outline of the pickle will be apparent and conspicuous.



(Testimony of Frederick E. Maynard.)

Q. 25. Does the placing of the word "Heinz" in exhibit "C" so that it shows inside the pickle convey any different idea or produce any different effect than that conveyed and illustrated in the patent exhibit "B"?

A. The location of the word "Heinz" with relation to the outline, or the pickle outline of the window, simply arrives at the same result, that is, advertisement, and the matter of the location of the word "Heinz" is not specifically defined in the specifications, and the patentee may have applied or printed the word "Heinz" on any portion of the envelop he desired. If the designer of the Heinz envelop disingenuously prints the word "Heinz" on the inside of the envelope and also on the outside of the envelope the words will immediately be associated, when visible, with the pickle-shaped outline. The means for arriving at the result—that is, advertisement—are precisely the same. The patent calls for an opaque envelope having a transparent envelope and in association with said window suitable words, as the name of a firm, and also states that the outline of the window may be shaped into the symbol of trade [71] of a manufacturer. Whether the word "Heinz" is printed at any certain position on the envelop does not affect the results. The instrumentalities for accomplishing the advertising are the same. The patents call for an opaque envelope. The exhibit marked "C" is an opaque envelope. The patents call for a transparent window made by the application of a suitable preparation on the inside of the en-

(Testimony of Frederick E. Maynard.)

velope and also called for a suitably-tinted outline around the transparent window to cover the effect of creep of the material producing the transparency, and the patents, taken as a whole, involve an envelope of this structure, having associated with the particularly-shaped window suitable words so that the association of the two will form an advertising of the firm distributing the envelope.

Q. 26. Referring to exhibit "C," leaving out of consideration for the moment the "return in five days to H. J. Heinz Company" notice, I would ask you if the envelope as presented to you with the word "Heinz" showing on the inside and showing through the transparent window is the equivalent of the illustration, Figure 1, of the patent exhibit "B" where the words "John Doe, 57 Varieties," with the pickle or cucumber are illustrated?

A. Yes. The exhibit "C" is a complete equivalent of the Cohn envelope.

Q. 27. Now, as I understand it, you are omitting for the moment the printed matter from the top which reads "return in five days to H. J. Heinz Company"? Is that correct?

A. That is the printed matter at the left-hand corner of the envelope, exhibit "C," in making that explanation; yes.

Q. 28. That question was independent of that, because you have said that the return mark fills the claim literally, and I am asking independent of that if the use of the word "Heinz" on the inside of the envelope, and showing through the window, is the

(Testimony of Frederick E. Maynard.)

equivalent of the printing "Joe Doe 57 Varieties" or anything else on the face of the envelope?

A. Yes, the [72] exhibit "C" is the substantial and identical equivalent of the Cohn envelope, whether the word "Heinz" is printed on the inside of the envelope so as to be associated with the pickle-shaped window, or whether it was printed on the outside of the envelope. The effect of printing the firm name and using the firm trademark outline is identically the same, the resulting advertisement being the purpose of the Cohn envelope and the purpose of the Heinz envelope, marked exhibit "C."

Q. 29. Do you find, Mr. Maynard, in exhibit "C" a conjoint use of the two patents or of the patented combinations of the claims of the two patents?

A. I do. The two patents in the aggregate called for an envelope so designed as to produce an advertisement. The patent No. 835,850 relates particularly to the structure of the envelope and the transparent window with its tinted border in the shape of the symbol of trade of a firm, and the other patent, No. 824,908, is for an advertising device comprised of the envelope of the patent No. 835,850 and the advertising device of the patent No. 824,908, so that the exhibit "C" of the defendant comprises the joinder of the subject matter of the two patents.

Cross-examination.

(By Mr. SULLIVAN.)

XQ. 1. Will you look at exhibit "C" there and tell me wherein the word "Heinz" appears on the face of the envelope? I am referring, now, particularly

(Testimony of Frederick E. Maynard.)

to the explanation which you gave a moment ago, omitting for the moment from exhibit "C," the printed matter "Return in five days to H. J. Heinz Co.," etc., "Baltimore, Maryland," and referring to your explanation of the word "Heinz" as advertised on the pickle, does that appear on the face of the envelope? By referring to exhibit "C" I am simply referring to the printed matter "H. J. Heinz Co." at the left-hand corner of the envelope. I am omitting that. A moment [73] ago you omitted that from your consideration when you said that the method or the manner of the envelope was similar to that of the Cohn patent. Will you please show me wherein the word "Heinz" appears "on the face of the envelope related to and in juxtaposition with the outline of the window and co-operating with said outline to indicate a particular brand of goods"?

Mr. TOWNSEND.—The witness was referring to equivalency. I don't understand him to have said that if you omit the return notice complete, which appears on the face of the envelope, that the word "Heinz" would appear on the face, but that the appearance of the word "Heinz" on the inside of the envelope would show through the window opening and in juxtaposition with the outline of the window and co-operating with said outline to indicate a particular brand of goods,—that that was the equivalent of the structure literally called for by the claim.

Mr. SULLIVAN.—Very well, then. It is conceded that if we omit the word "Heinz Company" and the printed matter at the left corner of exhibit



(Testimony of Frederick E. Maynard.)

“C,” the word “Heinz” does not appear on the face of the envelope?

Mr. TOWNSEND.—That is quite true.

XQ. 2. (By Mr. SULLIVAN.) You understand that these envelopes are supposed to contain letters, bills and so on, so that the letters or bills or whatever the contents may be in that envelope, shall appear between the face and the back of the envelope? Is that correct?

A. I understand that the inclosure would of course be placed inside the envelope?

XQ. 3. Yes, and if placed inside the envelope it would conceal the word “Heinz” on the rear part of the envelope, would it not?

A. It would conceal the word “Heinz” on the envelope only so long as the inclosure was in the envelope.

XQ. 4. Yes, sir. So that while the inclosure was in the envelope the word “Heinz” on the rear part of the envelope would be invisible [74] at all times?

A. The word “Heinz” which was printed on the back of the envelope would be invisible until the contents were removed, but the word “Heinz” as actually printed on the face of the envelope would always be conspicuous.

XQ. 5. Yes, sir. I am not speaking about printed matter, the word “Heinz” on the face of the envelope. I am leaving that out of consideration. The fact is that during no time when the inclosure is in the envelope, the word “Heinz” printed on the en-

(Testimony of Frederick E. Maynard.)

velope would be visible, leaving out of consideration the printing at the left-hand corner of the envelope? Is not that the fact?

A. The word "Heinz" would not otherwise be visible when the enclosure was in the envelope.

XQ. 6. At all times when the enclosure was in the envelope, the word "Heinz" would be invisible except as it appears on the left-hand corner of the envelope?

A. Except as it appears on the left-hand corner of the envelope.

XQ. 7. We have omitted that from consideration for the moment.

A. Of course, anything on the interior of the envelope that is behind the contents would be hidden, but the moment the contents are removed, the word "Heinz" appears so as to be in juxtaposition to the trade symbol outline of the pickle. Of course, it is not on the face of the envelope, but it appears just as plainly as it would if it were printed on the face of the envelope, no matter if it is printed on the inside, at the back of the envelope.

XQ. 8. A moment ago you admitted that it was printed on the back of the envelope. You do not pretend, now, that it is printed on the face of the envelope, do you?

A. Not printed on the face of the envelope.

XQ. 9. Of course, this patent claim Number 2 requires that it should be printed "in juxtaposition with the outline of the window and co-operating with

(Testimony of Frederick E. Maynard.)

said outline to indicate a particular brand of goods.”  
Is that correct?

A. Yes, but it [75] does not specify in what form it should be printed. The word “Heinz” might be printed either on the inside or the outside; consequently any printing of the word “Heinz” on the inside of the envelope is covered by the claim of the patent, just as well as if it were printed on the outside. Very frequently large manufacturing companies make paper on which is a water mark, and that water mark appears very close together on the paper, but in this instance the word “Heinz” may be printed anywhere. It may be printed on the outside and it may also be printed on the inside.

XQ. 10. You don’t pretend to say that the word “Heinz” is printed on the face of the envelope that we have here, do you?

A. Certainly, the word “Heinz” is not printed on the face of the envelope.

XQ. 11. By the word “Heinz” I do not mean the words H. J. Heinz Co. It is not printed on the face of the envelope?

A. No, the word “Heinz” is not printed on the face of the envelope except in the left-hand corner where large firms have their return notice on the envelope which is also used for the purpose of advertising.

XQ. 12. I will ask you again because I want to have the matter definitely understood, whether or not the word “Heinz” as it is printed, omitting for the moment the “Heinz Company” notice printed in the left-hand corner is on the face of the envelope, is

(Testimony of Frederick E. Maynard.)  
printed on the face of the envelope? Is it printed on the face of the envelope?

A. If you omit anything that is printed on the face of the envelope why it does not appear on the face of the envelope. If you include anything that is on the inside of the envelope, it does appear.

XQ. 13. Does it or does it not appear on the face of the envelope?

A. Omitting the words that are printed there; you will find the word "Heinz" printed on the inside.  
[76]

XQ. 14. It does, therefore, not appear on the face of the envelope?

A. Not the single word "Heinz" that is printed on the inside of the envelope.

Redirect Examination.

(By Mr. TOWNSEND.)

RDQ. 1. Taking exhibit "C," Mr. Maynard,—I hold it before you—I will ask you if it is a fact that there appears "permanent printed matter on the face of the envelope related to and in juxtaposition with the outline of the window and co-operating with said outline to indicate a particular brand of goods"? and I will cover up the return notice.

A. The word "Heinz" appears on the face.

RDQ. 2. And that is permanent printed matter?

A. Permanently printed on the envelope.

Recross-examination.

(By Mr. SULLIVAN.)

RXQ. 1. Do you want to be understood as testifying that the word "Heinz" is actually printed on the



(Testimony of Frederick E. Maynard.)

face of the envelope?

A. I didn't say that it was actually printed on the face of the envelope. I said that it appeared on the face of the envelope.

RXQ. 2. Yes, but the fact is that it was not printed on the face of the envelope.

A. No; the word "Heinz" is printed on the inside of the envelope.

RXQ. 3. Yes, sir. Therefore, it is not printed on the face of the envelope?

A. No, the word is printed on the inside. The word "Heinz" is also printed on the outside of the envelope.

RXQ. 4. Is the word "Heinz" printed on the outside of the envelope "related to and in juxtaposition with the outline of the window and co-operating with said outline to indicate a particular brand of goods"? A. The specification— [77]

RXQ. 5. I am not asking you about the specification. I am asking you if the word "Heinz" is permanently printed "on the face of the envelope related to and in juxtaposition with the outline of the window and co-operating with said outline to indicate a particular brand of goods?"

Mr. TOWNSEND.—You are referring to exhibit "C," introduced in evidence?

Mr. SULLIVAN.—I am referring to exhibit "C."

A. Well, the word "Heinz" is actually printed on the face of the envelope and is associated with the outline.

RXQ. 6. Is it "in juxtaposition with the outline of the window and co-operating with said outline to in-

(Testimony of Frederick E. Maynard.)

dicade a particular brand of goods”?

A. It has a position on the border of the envelope. The word “Heinz” may be placed anywhere on the envelope and still be in juxtaposition to the outline. It could not very well be on the face of the envelope unless it was in juxtaposition, so long as the outline appears on the face of the envelope.

Mr. TOWNSEND.—In your testimony you have referred to a torn envelope, and for the convenience of the Court in seeing the structure of the envelope, I offer this in evidence.

(Two envelopes are produced, pinned together and marked respectively “Complainant’s Exhibit ‘C’ (1)” and “Complainants’ Exhibit ‘C’ (2).” [78]

**[Testimony of Max M. Cohn, for Complainant  
(Recalled—Recross-examination).]**

Recross-examination of MAX M. COHN.

(By Mr. SULLIVAN.)

RXQ. 1. Mr. Cohn, had you or not, prior to January 17, 1907, conceived the idea of placing a border around the window of exhibit “C” so as to indicate the business of a person using the envelope?

Mr. TOWNSEND.—We object to that as not proper cross-examination.

A. I had.

RXQ. 2. (By Mr. SULLIVAN.) How long prior to January 17, 1905, had you conceived such idea?

Mr. TOWNSEND.—That is objected to as not proper cross-examination.

A. I can’t state at this time.

(Testimony of Max M. Cohn.)

RXQ. 3. (By Mr. SULLIVAN.) Was it more than a year?

Mr. TOWNSEND.—We object to that as not proper cross-examination, and on the grounds previously stated; also that the witness has stated that he can't remember at this present time.

Mr. SULLIVAN.—I object to counsel putting words into the mouth of the witness. I think the witness is capable of answering for himself.

A. As I stated before, it is impossible for me to tell, at this time, just when the idea was conceived.

RXQ. 4. Was it a day, one day prior?

A. Well, I guess so.

RXQ. 5. A month?

Mr. TOWNSEND.—We make the same objection.

A. At this time I can't give you the exact time. It would be necessary for me to go over the data that I have collated in this matter.

RXQ. 6. (By Mr. SULLIVAN.) Had you prior to November 8, 1904, conceived such idea?

Mr. TOWNSEND.—We make the same objection.

A. Yes.

RXQ. 7. (By Mr. SULLIVAN.) You had? Then, when you testified a moment ago that you didn't know whether it was more than a [79] month prior to January 17, 1905, that you conceived such idea, that testimony was untrue, was it?

A. Not prior to January, 1905; January, 1904.

RXQ. 8. And you said you didn't know. I asked you if you, as a matter of fact, conceived the idea

(Testimony of Max M. Cohn.)

prior to January, 1905, and you testified that you didn't know.

A. I don't think I testified that I didn't know. I said that I could not give the exact time at this time without consulting data that I have in this matter and interviewing some of the witnesses.

RXQ. 9. Was it before or subsequent to the issuance of the British patent that you first conceived the idea of placing around a window of the envelop a border so as to indicate the particular line of business of the user?

Mr. TOWNSEND.—We make the same objection; also that it is not proper cross-examination.

A. As stated before, it is impossible for me at this time to give anything definite in reference to the time of conception.

RXQ. 10. (By Mr. SULLIVAN.) You have data with you, have you, which will give you the time when you first conceived the idea?

A. I have a great deal of matter pertaining to those patents. It will take me a long time to go through it.

RXQ. 11. Yes, and your data will show the time when you first conceived the idea, will it?

Mr. TOWNSEND.—We object to that as not proper cross-examination, not proper matter at this time.

A. I think so.

RXQ. 12. (By Mr. SULLIVAN.) Yes, sir. What form is the data in?

Mr. TOWNSEND.—We make the same objection.

A. Correspondence and memoranda.



(Testimony of Max M. Cohn.)

RXQ. 13. (By Mr. SULLIVAN.) Where was the process of making the envelopes for the patent? Where did it take place?

A. Certain parts of the work were done in one place and other parts in another place. [80]

RXQ. 14. What places were they?

Mr. TOWNSEND.—We make the same objection; not proper cross-examination; irrelevant and immaterial.

A. They were made in the printing office of F. H. Abbott & Co.

RXQ. 15. (By Mr. SULLIVAN.) Where is he?

A. At that time they were located on Battery and Clay.

RXQ. 16. In this city?

A. In San Francisco.

RXQ. 17. Was that the only place?

A. They were also made at the office of Nolan-Davis Co.

RXQ. 18. All in this city?

A. In San Francisco.

RXQ. 19. Those are the only places?

A. Yes, that was where a certain part of the work was done; that is the printing part of it; the printing and application of the transparency.

RXQ. 20. Where was the work of putting the border around the window done?

Mr. TOWNSEND.—We make the same objection.

A. In the offices mentioned.

RXQ. 21. (By Mr. SULLIVAN.) In those two

offices?      A. Yes.

Mr. TOWNSEND.—Complainant rests. [81]

**[Examiner's Certificate to Testimony of Max M. Cohn.]**

United States of America,  
State and Northern District of California,  
City and County of San Francisco,—ss.

I HEREBY CERTIFY that the foregoing depositions were taken in pursuance of the stipulation hereunto annexed, at the place stated in the caption hereof and upon the day set forth in said caption, in my presence and in the presence of counsel for the respective parties to the cause in said caption entitled; that previous to giving their testimony, the said witnesses were by me duly sworn to tell the truth, the whole truth and nothing but the truth in said cause; that said depositions were taken down in shorthand writing under my personal supervision and were transcribed by Brainard C. Brown, pursuant to stipulation and agreement of counsel; that the reading and signing of said depositions were waived by the respective counsel; and that I have retained said depositions for the purpose of delivering the same to the clerk of the court for which they were taken.

Accompanying said depositions and forming a part thereof are the several exhibits introduced in connection therewith and referred to and specified therein.

I further certify that I am not attorney nor of counsel for any of the parties to said cause nor in any way interested in the event thereof.

IN WITNESS WHEREOF I have hereunto set my hand this 11th day of March, 1910.

H. M. WRIGHT,  
Examiner in Chancery, U. S. Circuit Court, Ninth  
Judicial Circuit, Northern District of California.

[Endorsed]: Published and Filed Jun. 2, 1911.  
Southard Hoffman, Clerk. By J. A. Schaertzer,  
Deputy Clerk. [82]

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**[Notice of Taking of Testimony.]**

*In the United States Circuit Court for the Ninth  
Circuit, Northern District of California.*

IN EQUITY—No. 15,204.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY, a Corporation,

Respondent.

To the Above-named Respondent, and to Messrs.  
Banning & Banning, Its Solicitors.

You will please take notice that I shall proceed to take the testimony of witnesses on behalf of complainant in the above-entitled action, in the above-named court, before the Honorable H. M. WRIGHT, Master and Examiner in Chancery of said court, in his courtroom in the Postoffice Building, Seventh and Mission streets, in the City and County of San Francisco, State of California, on Thursday, the 23d day of February, 1911, at the hour of ten o'clock in the

morning of said day, or as soon thereafter as counsel can be heard.

You are invited to attend and cross-examine.

Dated January 20th, 1911.

CHARLES E. TOWNSEND,

Solicitor for Complainant.

Notice accepted for Thursday, February 23, 1911.

BANNING & BANNING,

For Defendant. [83]

Thursday, February 23, 1911, 10 A. M.

Proceedings had pursuant to the foregoing Notice.

Counsel appearing:

For Complainant, CHAS. E. TOWNSEND,  
Esq.

For Respondent, THOS. A. BANNING, Esq.

**[Stipulation Concerning Taking of Testimony, etc.]**

It is stipulated between the respective parties that the testimony and proceedings in this case may be taken upon a typewriting machine on oral questions and answers, at the offices of Chas. E. Townsend, Esq., 1105 Merchants Exchange Building, City and County of San Francisco, State of California; the witnesses first having been sworn, either by the Master, the Hon. H. M. Wright, or a duly qualified notary public, or other officer competent to administer oaths; said testimony to be taken and received with the full force and effect as if taken directly before the Master or Examiner and in his presence, and by the official reporter and according to the usual procedure.

When the testimony is completed the same is to be promptly returned to the Examiner, for certification



and filing. [84]

By Mr. TOWNSEND.—I offer in evidence the William A. Stickney Cigar Company transo envelop, Complainant's Exhibit "E" for identification, and ask that the same be marked, Complainant's Exhibit "E."

I offer in evidence, the Samuel Jones & Company London, transo envelop, Complainant's Exhibit "F," for identification, and ask that the same be marked, Complainant's Exhibit "F."

I offer in evidence, the prepared transo sheet with the several window portions shown thereon, and previously marked, Complainant's Exhibit "G," for identification, and ask that the same be designated as Complainant's Exhibit "G."

I offer in evidence, the Transo Paper Company's letter of September 22, 1910, to Gabriel Meyerfeld Co., Complainant's Exhibit "I," for identification, and ask that the same be marked, Complainant's Exhibit "I."

I offer in evidence certified copy of abandoned application of George Reese, Serial No. 189,191, filed January 15, 1904, for Improvement in Envelop and Blanks Therefor, Complainant's Exhibit "H," for identification, and ask that the same be marked, Complainant's Exhibit "H."

Written specification and claims of this abandoned application of Reese is as follows, to wit: [85]

**[Specification and Claim of Abandoned Application  
of George Reese.]**

**TO ALL WHOM IT MAY CONCERN:**

Be it known that I, George Reese, a citizen of the United States, residing at Chicago, in the County of

Cook, and State of Illinois, have invented certain new and useful Improvements in Envelopes and Blanks Therefor, of which the following is a specification:

The object of this invention is to produce an envelope having proper means provided in the formation thereof for displaying an address written upon the letter, card, or other article inclosed, so that the address will be legible therethrough without the necessity for providing an additional address upon the exterior of the envelope. The invention consists in so forming the envelope that there will be no necessity for cutting or perforating the blank or material from which it is made, which cutting or perforating would *be* course tend to impair the blank, increase the cost of manufacture of the envelope and waste the portions cut therefrom.

In the drawings illustrating the invention Figure 1 is a plan view of the blank; Fig. 2 a front view of the completed envelope, having therein an addressed letter; and Fig. 3 a reverse view of the folded envelope.

As shown, the envelope is formed from a blank A of any usual and well-known shape and size and said blank consists of a body portion B, having attached thereto side wings C, a lower flap D and an upper flap E, although the envelope may be formed in any other suitable manner [86] and of other suitable size and shape. The body and flaps of the envelope, as shown, are formed of opaque paper of any suitable composition, and within the opaque body of the envelope is located a transparent portion F, which is

formed integral with the substance of the rest of the blank, and said transparent space may be formed either by making the portion of the envelope constituting the transparent space of less thickness than the rest of the blank or by applying an opaquing substance such as ink, paint, or similar material to the rest of the blank, or by applying a substance, such as oil, to the space desired to be rendered transparent. It is preferred, however, to employ the first method and to make the transparent portion of less density or thickness. By making the blank in this manner the completed envelope will be much stronger and more durable than an envelope from which a portion has been cut away, or than an envelope having a transparent paper pasted over an aperture therein. A further advantage will be found from the fact that no raised edges are left around the transparent portion, since the entire blank is formed of a single sheet of paper, and the transparent portion is integral with the remainder. A further advantage in this mode of making the blank lies in the fact that the transparent portion can be formed in the making of the paper in a roll, so that a series of blanks can be cut from a single roll, each blank having suitably positioned, a transparent portion. In this way the operation of forming the blank will be greatly simplified and the cost of making the envelope lessened very materially. [87]

After the blank has been formed, as above described, either by opaquing the body and flaps, or by making a portion transparent by making it of less density than the remainder, or otherwise, the enve-

lope is completed by turning in the side wings and lower flap in the usual manner, leaving the upper flap to be sealed when desired. The letter G, or other article to be inserted, is then inscribed with the desired address H in such position that when folded and inserted the address will be located immediately behind the transparent portion of the envelope, thereby displaying the address there-through. The opaque body serves to conceal all other portions of the letter, making it impossible for anyone to read the contents thereof and allowing the address only to be seen.

What I regard as new and desire to secure by letters patent:

1. As a new article of manufacture, an envelope blank formed of comparatively opaque material, having located therein a transparent portion formed integral with the opaque portion, said transparent portion being located in a position that will permit a blank to be folded into an envelope with the transparent portion occupying the address space of the envelope, substantially as described.

2. As a new article of manufacture, an envelope blank formed of comparatively opaque material, having a transparent portion of less density than the remainder of the blank and formed integral with the opaque material, said transparent portion being located in a position that will permit the blank to be folded into an envelope with the transparent portion occupying the address space of [88] the envelope, substantially as described.

3. As a new article of manufacture, an envelope



blank having a transparent portion formed integral with the remainder of the blank and having the remaining portion of the blank covered with suitable opaquing substance, said transparent portion being located in a position that will permit the blank to be folded into an envelope with the transparent portion occupying the address space of the envelope, substantially as described.

4. As a new article of manufacture, an envelope of comparatively opaque material having a transparent portion formed integral with the opaque material, said transparent portion being located in a position to occupy the address space of the envelope, substantially as described.

6? As a new article of manufacture, an envelope of comparatively opaque material having a transparent portion formed therein integral with and of less density than the opaque material, said transparent portion being located in a position to occupy the address space of the envelope, substantially as described.

7? As a new article of manufacture, an envelope having in its body a transparent portion occupying the address space of the envelope and having the remainder of the envelope covered with a suitable opaquing substance, substantially as described.

GEORGE REESE.

Witnesses:

WILLIAM P. BOND.

WALKER BANNING. [89]

By Mr. TOWNSEND—MAX M. COHN.

I offer in evidence as Complainant's Exhibit "J" a

certified copy of the Appeal to the Commissioner and the Commissioner's decision in the matter of the application of Max M. Cohn, filed November 8, 1904, Serial No. 231,886, for "Improvement in Envelop." This decision is as follows:

**[Appeal to Commissioner and Commissioner's Decision Re Application of Max M. Cohn, Filed Nov. 8, 1904, Serial No. 231,886 for "Improvement in Envelope."]**

UNITED STATES PATENT OFFICE.

Ex parte Max M. Cohn.

Envelopes.

Appeal from Examiners-in-Chief.

Application filed November 8, 1904, No. 231,886.

Mr. George H. Strong and Mr. T. W. Fowler, for appellant.

This is an appeal from the decision of the examiners-in-chief denying the patentability of the following claims:

"1. As a new article of manufacture, an envelop with an unpunctured face of relatively opaque stock, said envelope face having a transparent window and a contrasting border around said window to give definition to the window opening.

"2. As a new article of manufacture, an envelop with an unpunctured face of relatively opaque stock, said envelop face having a portion to which a preparation has been applied to render such portion transparent, and a colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding

opaque stock." [90]

The references are:

Brown, September 9, 1862, No. 36,293;

British patent to Cohn et al., No. 14,478, June 27, 1904;

British patent to Busch, No. 11,876, June 1, 1896.

The nature of the alleged invention is clearly set forth in the decision of the examiners-in-chief in the following language:

"The alleged invention relates to the class of envelopes in which the address is not written on the envelope itself, but on a paper inside the envelope and is read through the transparent surface thereof. The appellant starts with an opaque material and by treating a portion thereof makes a transparent window therein at the point where the address is to appear. It is said that the preparation used in treating the material to make the transparent window cannot be applied in such way as to make a clear cut and regular outline for the window, but will creep and make an irregular and rough outline. To hide this rough outline and leave a transparent window of symmetrical and regular shape the applicant applies a colored border to the surface around the window."

The specification of the patent to Brown states:

"The improvement is to make the envelope or wrapper transparent sufficiently to clearly show the cards of address through it face. There may be only a transparent portion B large enough to exhibit the 'direction' through it; and this may be made either by rendering a portion of

the envelope or wrapper itself transparent by the same means or substances as employed for making tracing paper or any other in the process of manufacturing the paper, or the envelope, leaving the remainder of the envelope opaque. Or a piece of the envelope of the proper size and shape may be cut out of the envelope; and the aperture thus made covered with transparent paper or other equivalent transparent covering."

This case is believed to present invention. The essence thereof is found to lie in the application of a contrasting or colored border around a transparent opening whose edges are of irregular outline in such manner that the border obscures the irregular outline, defines the size of the opening, and makes the article a salable commodity.

The language of claim 1 does not indicate that the transparent opening in the envelope is of irregular outline, or that the border covers any portion of its transparent surface. This claim is not regarded as defining anything patentable [91] over the patent to Brown.

Claim 2, however, defines the invention with sufficient clearness to render it allowable. This claim covers the envelope of opaque material, having a portion to which a preparation has been applied to render it transparent, the transparent portion being of irregular outline due to the spreading or creeping of the preparation used, and a border concealing the irregular outline of the transparent portion of window. While the final result is to enhance the



appearance by concealing the irregular outline, the result is brought about by mechanical features, namely, the application of the printed border to a portion of the paper to which the oily preparation has been applied. The British patents are not regarded as anticipations, as they require, so far as can be understood, that the envelope blank be made from a transparent sheet of paper, while appellant starts with an opaque sheet of paper.

The decision of the examiners-in-chief is affirmed as to claim 1 and reversed as to claim 2.

E. B. MOORE,  
Acting Commissioner.

August 1, 1906. [92]

It is stipulated and agreed that "the patent on the Outlook envelop of June 10, 1902, issued to Americus F. Callahan of Chicago," referred to in the letter of Messrs. Banning & Banning, December 16, 1903, to Mr. Regenstein, appearing on pages 18-19 of Defendant's Record, is the Callahan Patent #701,839, dated June 10, 1902, and previously offered in evidence page 372 D. R.

By Mr. TOWNSEND.—I offer in evidence as Complainant's Exhibit "K," British Patent #28,592, A. D. 1904, of George Reese, Improvement relating to envelopes, date of application in the United Kingdom, 28th Dec. 1904, accepted 16th Feb. 1905.

It is hereby stipulated and agreed that the invention described in said British patent is the same invention described in the Reese United States Patent #766,902, Aug. 9, 1904, introduced in evidence by the defendant, that the drawings in the British

and United States patents are identical, and that the only difference between the two patents is with respect to the second claim of the British patent which calls for a series of blanks with transparent portions of less density than the body of the sheet, whilst the second claim of the American patent calls for a sheet adapted for the making of an envelop blank, the sheet having an opaque body with a transparent space, with no reference to density. [93]

**[Testimony of Max M. Cohn, for Complainant  
(Recalled).]**

Examination-in-chief of MAX M. COHN, recalled for complainant.

(By Mr. TOWNSEND.)

Q. 1. Mr. Cohn, you are the party complainant who has already been sworn and have testified in this case. Are you not? A. I am.

Q. 2. Are you familiar with the transo envelops known as or like the Transo stock envelop which has been introduced in evidence by the defendant, and with the Heinz envelops, Complainant's Exhibit "C"? A. I am.

Q. 3. Did you ever manufacture or cause to have manufactured any envelops according to either of your patents? A. I have.

Q. 4. Did you ever put any of them into actual use? A. Yes.

Q. 5. When and generally to what extent?

A. In November, 1904, I furnished A. Zellerbach & Sons with 10,000 envelops, all of which were used by them in mailing out bills, statements and correspondence, some being used in San Francisco, while

(Testimony of Max M. Cohn.)

others were mailed to various parts of the United States. [94]

Q. 6. In general, what were the construction and appearance of those envelopes?

A. These envelopes were made from a single sheet of paper, a portion of which had been rendered transparent by having an oily preparation applied to it and a border of opaque ink surrounding this transparent portion, the remainder of the envelop being printed with a light tint, the object of the transparency being to allow the address on an enclosure to show through the window or transparent portion; the object of the border being to define the window or transparent portion and to cover up the effect of the oily preparation which had the tendency to creep or bleed. The general appearance of the envelop was neat and satisfactory.

Q. 7. Who was the inventor of that envelop?

A. I was the inventor.

Q. 8. Will you please state as specifically as you can the origin in your mind of an envelop of that character and its general development by you, giving us the dates and the various steps taken from time to time which led up to your application of the patents here in suit, and the placing on the market and into use of the envelopes in November, 1904, as you have testified.

A. For several years prior to 1902 when I was employed by the Abramson-Heunisch Glass Co., afterward known as the Illinois-Pacific Glass Co., I had been using an envelop manufactured by the

(Testimony of Max M. Cohn.)

Sherman Envelop Co. which had an oval or rather oblong [95] opening with rounded corners. The object of this opening was to allow the address on an enclosure to be visible, and obviated the necessity of writing an address on the envelop. Late in the year 1902 an employee of the San Francisco Postoffice called on me at my office and requested that I discontinue the use of these envelops, stating that they were causing a great deal of trouble in the manipulation of the cancelling machine. I felt very reluctant about giving up the use of these envelops, as I had begun to realize that besides being great labor savers they insured the correct addressing of various bills and communications. Therefore, I gave a great deal of thought as to an improvement. In other words, to get an envelop which would accomplish the same purpose and at the same time be acceptable to the postal authorities. I finally concluded that there were two ways of accomplishing this result. One, by taking a sheet of transparent paper and rendering it opaque with the exception of the space reserved for the address and the other of taking a sheet of opaque paper and rendering it transparent in the portion reserved for the addressing space. Shortly after coming to this conclusion, I began a series of experiments. I encountered very little difficulty in taking a transparent sheet and rendering it opaque in that portion not reserved for the address, but I found a great deal of difficulty in taking an opaque sheet and rendering it transparent in a certain portion. [96]



(Testimony of Max M. Cohn.)

I tried a great many different kinds of paper and a great many different kinds of preparations, but was not satisfied with any of the results obtained. The principal difficulty being that whenever I applied the preparation which in every instance was of an oily nature, I discovered that the preparation had a tendency to spread beyond the limits of space where it was originally applied. After much thought I finally struck the idea of printing a border around the transparent portion, and after that all my experiments included this border, and I have always considered it a very essential feature of my invention. This discovery was made by me some time in the year 1903. This date being indelibly impressed on my memory from the fact that I severed my connection with the Illinois-Pacific Glass Co. on October 15, 1903, in order to take a position with A. Zellerbach & Sons, now known as the Zellerbach Paper Company, I being Secretary of that Corporation at the present time. I had been connected with the Glass Company for eleven years prior to October 15, 1903. Therefore, this was my only change in about eighteen years, and there is no chance for any mistake in date.

For convenience I will refer to the Abramson-Heunisch Glass Co., or Illinois-Pacific Glass Co., simply as the Glass Company, and A. Zellerbach & Sons, or Zellerbach Paper Co., as the Zellerbach Company. [97]

The Glass Company mentioned above maintained a large printing and label department and I made

(Testimony of Max M. Cohn.)

use of this department in my various experiments, up to the time that I severed my connection with them, on October 15, 1903. After I started with the Zellerbach Company I continued my experiments in the office of F. H. Abbott & Company, the printing office situated at that time on Clay and Battery Streets, which was just one block away from the office of the Zellerbach Company.

Q. 9. In your statement just include a detail of what you had done up to the time you left the Glass Company, in October, 1903.

A. My early experiments consisted of taking a sheet of paper and applying various oily preparations with a brush. Later, I applied these preparations with a block of wood and with pieces of rubber. It was then that I found that the oily preparation would spread beyond the size of the block. I remember one instance after applying the oily preparation I took a lead pencil and marked all around the spot made by the preparation and the next day I discovered that the oil had gone over the pencil marks in every direction. After making the discovery mentioned above of printing a border around the transparent portion I consulted with Mr. Epting, an artist in the employ of the Glass Company, and asked him to make a drawing for me from which a zincograph could be made, and I described to him several designs that I had in mind. Among others [98] was a design showing an oblong space surrounded by a cloud effect. I have in my possession an envelop which was made from

(Testimony of Max M. Cohn.)

the original zincograph. This envelop shows that the ink is applied solidly around the space, which is understood to be the space reserved for showing the address, which I will call the window space, and is gradually shaded off. As a matter of fact, I bothered the various employees of the label department to such an extent that I incurred the wrath of the manager, Mr. George Walter, who had charge of all the employees in the label department, and had I not been an officer in the corporation I think he would have kicked me out bodily. After zincographs had been furnished me by Mr. Epting of the label department, I took sheets of paper which I had prepared myself with an oily preparation and had the designs printed around the window space, thus prepared. The first ink that I used did not answer the purpose, and I was obliged to experiment with a great many different kinds of ink before securing one that would answer the purpose.

Shortly before leaving the Glass Company I was introduced to a gentleman named B. T. Bean, a system man from Chicago. He was at that time installing a system for Dunham, Carrigan & Hayden, a hardware concern whose place of business adjoined the Glass Company. Realizing that Mr. Bean was a man of a great deal of experience, also a man who was entrusted [99] with all sorts of business secrets, I spoke to him in reference to my invention and showed him specimens that I had prepared in the manner described above. He was very enthusiastic about the envelop and in reply

(Testimony of Max M. Cohn.)

to my inquiry stated that in his entire experience, which carried him to every part of the United States, he had never seen anything like it, and told me that there would be a great market for an envelop of this description. It was about the time that I had the above interview with Mr. Bean that I made the change from the Glass Company to the Zellerbach Company. I remember this because I suggested to the Glass Company that since they were about to change accountants it would be a good time for them to establish a new system and Mr. Bean coming highly recommended, I considered him a good man to engage.

Recess. [100]

Session Resumed at 2 P. M.

Summing up what I did up to the time of leaving the Glass Company on October 15, 1903, is as follows:

I conceived the idea of making an unpunctured envelop with a window addressing space.

I succeeded in making an opaque sheet, transparent by the use of an oily preparation.

I discovered and applied a printed border around the window addressing space.

I disclosed my invention to a disinterested party.

Very shortly, say within a week or two, after taking up my duties with the Zellerbach Company, I continued my work on this envelop transferring my field of operation to the printing office of F. H. Abbott & Company, because of their close proximity to the Zellerbach Company.



(Testimony of Max M. Cohn.)

After October 15, 1903, all my printing was done at Abbott's office, but I continued to have my drawings and zincographs furnished by the Glass Company, because F. H. Abbott & Company being commercial printers had no art department in connection with their business. From the time I began working with the Abbott Company I started to apply the oily preparation by means of a printing-press. Up to this time I had used a brush or applied it with a block of wood or a piece of rubber, much in the same manner [101] as rubber stamps are used. I encountered the greatest difficulty in finding a suitable material for making the transparent window, and in connection with Mr. Tooker, foreman of the Abbott Company, I worked continuously over a period of a great many months, putting in several evenings, also several holidays and Sundays. I found in some instances where I succeeded in getting a preparation that made an excellent transparency, that it would fade out and become almost useless, said preparations would keep the paper transparent for about a month and then for some reason or other, the paper would become opaque again, and in some instances, this would occur within a very few hours after the preparation had been applied. I kept persistently at work from the time of my conception until about August or September of 1904, when I brought my invention to a state of perfection. It was this time that I placed an order for the Zellerbach Company with F. H. Abbott & Company for 10,000 envelop blanks, such

(Testimony of Max M. Cohn.)

as described above, and I still have in my possession a sample, which I here produce. (Witness produces and hands envelop to Mr. Townsend.)

I also have in my possession an envelop which I here produce which carries the San Francisco postmark dated November 27th, 1 P. M., 1904. This envelop was used to carry a letter addressed to my brother in Manila and was received in Manila as per postmark on the reverse side of this envelop under date of December 28th, 3 P. M. (Witness produces.) [102]

This envelop is an exact fac-simile of the envelop just handed to Mr. Townsend, and is one of the 10,000 lot ordered by A. Zellerbach & Sons from Abbott & Company.

The letter enclosed in this envelop to my brother contained a request for the return of this same envelop, so that I could judge for myself what condition it was in after having gone halfway around the world. I have had this envelop in my possession ever since my brother returned it to me, which was very shortly after its receipt.

Before making these 10,000 envelops, F. H. Abbott & Company printed for me some sample envelop blanks printed from a zinco which was made by the Illinois-Pacific Glass Co. before October 15, 1903. I produce an envelop printed by F. H. Abbott & Company showing the cloud effect and which was printed from a zincograph made by the Glass Co. while I was still in their employ. I personally carried this zincograph, together with several others,

(Testimony of Max M. Cohn.)

from the printing department of the Glass Company to the printing office of F. H. Abbott & Company. (Witness produces.)

I also produce an envelop with the same cloud effect, only that a silver bronze has been applied in the process of printing. This envelop, with the silver cloud effect was produced from the same zincograph as the other cloud envelop just produced with the blue ink. (Witness produces.) [103]

By Mr. TOWNSEND.—I will interrupt the witness one moment to offer in evidence the four envelops to which he has just referred to.

First, I offer in evidence the envelop representing one of the 10,000 printed for the Zellerbach Company in August or September, 1904, and ask that it be marked Complainant's Exhibit "L."

Second, I offer in evidence the envelop of similar character, bearing the San Francisco postmark of November 27th, 1904, and the Manila postmark, December 28th, 1904, and ask that the same be marked Complainant's Exhibit "M."

Third, I offer in evidence the cloud effect envelop printed in blue, and ask that the same be marked Complainant's Exhibit "N."

Fourth, I offer in evidence the cloud effect envelop printed in silver bronze, and ask that the same be marked Complainant's Exhibit "O."

(Witness Continuing:) Going back to the order of the Zellerbach Company to F. H. Abbott & Company for 10,000 envelop blanks, would state that Abbott & Company applied the transparency and

(Testimony of Max M. Cohn.)

printed the border and return card, as shown on the specimens produced, exhibits "L" and "M" on these 10,000 blanks, each blank being made on a separate sheet. [104] These 10,000 sheets were then delivered to the manufacturing department of the Zellerbach Company, and were cut out on an ordinary paper cutting machine in the shape of a diamond. The four corners were then notched by an adjustable punch or die; this adjustable punch or die consisting of four angular blades capable of being shoved together or spread apart. (Witness illustrates his explanation by reference to a diamond-shaped blank envelop similar to exhibit "L".) The blank used by witness in his explanation is offered in evidence as Complainant's Exhibit "P."

(Witness Continuing:) The adjustable die described above, punches out the four corner notches in one operation.

Mr. TOWNSEND.—Please mark by the word "notches" the corner notches you just referred to, making this notation on the unprinted portion of exhibit "P."

(Witness Continuing:) These blanks are then folded and pasted by hand, the Zellerbach Company employing a number of girls to do work of this character.

While working on various styles of envelop blanks I discovered that a good use could be made of the necessary border for the purpose of advertising, and I made a good many specimens of envelop blanks [105] with borders carrying out this conception.



(Testimony of Max M. Cohn.)

I conceived this idea some time in the summer of 1904. To be more specific I will state that this border took on the general outline of a cigar, a pickle or cucumber, a cascade, and other well-known articles. Some time in October, 1904, I took samples of perfectly finished envelopes to Mr. Townsend, with whom I had consulted on this subject many months previous, and asked him to prepare a patent application, which he did. This resulted in the filing of the application of my envelop patent, November 8, 1904, and which application resulted in patent #835,850 of November 13th, 1906, here in suit. Almost immediately after instructing Mr. Townsend to file this patent I consulted Barnhart & Swasey, afterward known as the Nolan, Davis Company; they being a firm that made advertising a specialty, in reference to the advertising feature of my envelop. Barnhart & Swasey had a well-equipped art department and printing plant in connection with their business, and immediately realized the value of my invention when I disclosed same to them. They made a great many specimens of various designs, one of which I here produce. (Witness produces.) Unfortunately, almost all the work consisting of four or five completed envelop specimens of different designs and some two hundred sketches made by their artists were destroyed in the great conflagration of April 18th, 1906. [106]

(By Mr. TOWNSEND.)

Q. 10. Referring to this last cigar envelop made by the Barnhart & Swasey Company for you, can you

(Testimony of Max M. Cohn.)

give the date when that was made?

A. Either October or November, 1904.

By Mr. TOWNSEND.—I offer the envelop last referred to, as Complainant's Exhibit "Q"; said exhibit being a folded envelop blank of generally opaque stock with a window portion integral with the body of the envelop, and showing apparently the application of a transparency forming preparation through the window, with a defined border around this window in the shape of a lighted cigar with the smoke of the lighted end of the cigar extending through the generally blue field of the envelop and forming a background for the word "Perfecto," which appears in red ink, above the cigar. Below the outline of the cigar is the word "Cigar" in red *the flank by four matches*; the matches being shown with whitish stems and red heads. On the back of the envelop are the words, printed in red: "Patent Applied For."

Q. 11. Prior to the production of this Perfecto cigar envelop exhibit "Q" had you made [107] any advertising envelops of this sort while working with Abbott & Company, or otherwise, and after you had conceived the idea?

A. Yes. I made some envelops with the border in the shape of a cigar and a pickle at the shop of Abbott & Company.

Q. 12. Was there any printed matter on the envelop in association with the picture or outline of the cigar or pickle which would indicate the particular brand of goods?

(Testimony of Max M. Cohn.)

A. Yes. In connection with the cigar were the words "Cremo" above the outline of the cigar, and the word "Cigar" below. In the case of the envelop showing the outline of a pickle was the single word "Heinz" above the pickle and "57 Varieties" below the pickle.

Meeting adjourned until February 24th, 1911, 10 A. M. [108]

San Francisco, February 24, 1911, 10 A. M.

Parties met pursuant to adjournment. Present as before.

(By Mr. TOWNSEND.)

Q. 13. Mr. Cohn, will you please read over the claim of your first patent 835,850 and state what elements of that claim, if any, are present in these old envelops of yours which have been introduced in evidence, as Complainant's Exhibits "L," "M," "N," "O," "P," and "Q"; and if any elements of the claim are omitted, state what they are.

A. The claim in this patent calls for an envelop with an unpunctured face. All the exhibits referred to are envelops with "an unpunctured face." The claim further states that the envelops are to be of "relatively opaque stock." All of the exhibits show envelops of relatively opaque stock. The claim further states that "said envelop face has a portion to which a preparation has been applied to render such portion transparent." All the exhibits referred to have had a preparation applied to them to render such portion transparent. The claim further states

(Testimony of Max M. Cohn.)

that "a colored or tinted border surrounds said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock." All of the exhibits referred to have a colored or tinted border surrounding the transparent portion, for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding [109] opaque stock. I find no elements of the claim omitted in the envelopes here exhibited.

Q. 14. Are these envelopes, exhibits "L," "M," "N," "O," "P," and "Q," fair samples of the work that you turned out at that time, particularly with respect to transparency and appearance?

A. No. They are not fair samples of the general work that I did at this time, especially with reference to the state of transparency. As a matter of fact, some of the Zellerbach Company envelopes which I herewith present were culled from the lot that I made, on account of not being up to the standard. I had a great many better specimens in my office but these were all destroyed in the disastrous fire of April 18, 1906.

Q. 15. Do I understand that the envelopes that were actually used by the Zellerbach Company in 1904 were even better specimens than these exhibits are?

A. Yes. The envelopes used by the Zellerbach Company in 1904 were perfect in every respect, the address on an enclosure showing very clearly through the transparent portion. They were considered per-



(Testimony of Max M. Cohn.)

fect by everyone who saw them. [110]

Q. 16. You mentioned the name of Mr. B. E. Bean yesterday. Where is Mr. Bean located at present, if you know?

A. Mr. Bean at present is a member of the firm of Klink, Bean & Co., in the Audit and System Business with an office in the Kohl Building, corner Montgomery & California Streets, San Francisco.

Q. 17. Do you know where Mr. Epting is now?

A. Mr. Epting still continues to do artist work in the building used by the Sunset Publishing Company, on Battery near Sacramento Street, San Francisco.

Q. 18. Do you know where Mr. Tooker is located at present?

A. Mr. Tooker is still foreman of the F. H. Abbott Press-room, which is situated on Mission St. near First Street, San Francisco.

Q. 19. You have stated that before you had left the Glass Company in October, 1903, that you had conceived the idea of making an unpunctured envelop, with a window addressing space and of making an opaque sheet transparent by the use of an oily preparation and had applied a printed border around the window addressing space, and that you had disclosed the invention to others. [111] Do you remember whether you made up into an envelop such an oil-treated opaque sheet?

A. I made up several envelops by cutting out the blank with a pair of scissors and pasting it by hand.

(Testimony of Max M. Cohn.)

Q. 20. State whether or not, such hand-made envelop embodied the elements set forth in the claim of your first patent, here sued on.

A. It embodied every one of the elements in the claim present in suit.

Q. 21. Can you produce any of those early hand-made envelops?     A. I cannot.

Q. 22. For what reason?

A. They were also destroyed in the fire. I wish to explain here that owing to having a sick child I was unable to leave home at the time of the fire and did not get down town until my office was entirely destroyed. It was therefore impossible for me to save anything of value.

Q. 23. You have stated that in your efforts to get up a one-piece envelop with a transparent window that would be acceptable to the postal authorities that you "finally concluded that there were two ways of [112] accomplishing this result. One by taking a sheet of *transparent paper* and rendering it opaque with the exception of the space reserved for the address, and the other by taking a sheet of *opaque paper* and rendering it transparent in the portion reserved for the addressing space." As I understand it, you have developed in your testimony thus far the second feature above: that of taking an opaque paper and rendering it transparent in the portion reserved for the addressing space which culminated in the exhibit envelops herein introduced, and in the filing of the application for the patents on which this suit is based.

(Testimony of Max M. Cohn.)

What did you do, if anything, towards developing the other idea of starting with a sheet of *transparent paper* and rendering it opaque with the exception of the space reserved for the address?

A. I made up some hand-made envelops, using transparent paper and printing the same with opaque ink over the entire surface with the exception of the addressing space, and applied for a patent, said application being filed in the Patent Office on May 9, 1904, Serial No. 207,082. I also applied for a patent in Great Britain, application reaching the British Patent Office June 27, 1904. In this British application I was joined with John Charles Shipp. The application of the United States patent [113] resulted in a rejection. The British patent was granted, and is numbered  $\neq$ 14,478, A. D. 1904. I discovered, however, that the envelops made by this method were not satisfactory or merchantable, firstly, on account of the transparent paper I was compelled to use was of a very brittle character, and had a tendency to crack; secondly, it was very difficult to seal envelops of this character, the gum used in the ordinary envelop not adhering to the smooth surface of the transparent paper; thirdly, stamps would not adhere with sufficient strength to the smooth surface of the paper. The envelops produced by this method had the similar appearance to the imitation Busch envelop, introduced by the defendant, opposite page 400 in the defendant's testimony. Considering all the objectionable features I abandoned the idea of manufacturing envelops of this character.

(Testimony of Max M. Cohn.)

Q. 24. Have you a specimen envelop such as you have just mentioned which you made of transparent paper?

A. I have, and herewith produce same. (Witness produces.)

By Mr. TOWNSEND.—This envelop submitted by witness is here offered in evidence as Complainant's Exhibit "R." Counsel further states that if called and sworn [114] he would testify that this particular envelop Exhibit "R," has been in the original file in his office continuously from a date earlier than November 4, 1904, which is the date of the amendment addressed to the Patent Office in the matter of the said abandoned application M. M. Cohn, Ser. No. 207,082, filed May 9, 1904, though how much earlier than Nov. 4, '04, he is unable to state, and that to the best of his recollection and belief the sample envelop filed with the Patent Office at that time is a duplicate of the specimen, exhibit "R."

Counsel would also state that he has in his possession a certified copy of the file wrapper, contents, and drawings in the matter of said abandoned application #207,082, which he herewith tenders counsel for defendant in case counsel for defendant wishes to introduce said file in evidence.

By Mr. BANNING.—After comparing the specification of the British patent #14,478, of 1904, Cohn et al., with the specification of the abandoned application ser. No. 207,082, filed May 9, 1904, and the drawings of said British patent with the drawings of said abandoned application, it appears that the speci-



(Testimony of Max M. Cohn.)

fifications and drawings of such British patent and of such abandoned application are substantially identical—disregard being had to the fact that in the British patent the plural is used, while in the abandoned application the singular is used to designate the applicants. [115] And disregarding also certain amendments made to the specification of such abandoned application during its pendency in the United States Patent Office, and the claims of the British patent, and those filed with the abandoned application.

(By Mr. TOWNSEND.)

Q. 25. Can you fix the time that this transparent sheet envelop exhibit "R" was made by you?

A. I cannot fix the exact date, but feel reasonably certain that it was made at about the time application was filed for the United States patent.

Q. 26. Which application?

A. Application filed May 9, 1904, Ser. No. 207,082.

Q. 27. You have stated that the paper used in making this exhibit "R," being so brittle, would break, and the difficulty in making the stamp and paste adhere. Were there any other difficulties in the way of this being a practical commercial envelop?

A. Another difficulty toward making this envelop a success was the fact that a very dark colored ink had to be used in order to make the transparent paper sufficiently opaque, and many firms would dislike using an envelop of this character. [116]

Q. 28. Would that objection, or any of these objections that you have mentioned apply to the so-

(Testimony of Max M. Cohn.)

called Busch sample, opposite page 400 of the defendant's record?

A. All of the objections mentioned would apply to the so-called Busch envelopes mentioned, with the further objection that by putting an enclosure in envelop marked "No. 1," of the so-called Busch envelop opposite page 400 in defendant's testimony, would give it the appearance of a "mourning" envelop, giving it the exact appearance of the popular mourning stationary. This would certainly preclude their use for any business purposes.

Q. 29. Referring to the transparent paper envelop "R," if the paper you used was brittle and had a polished glazed surface, which was abhorrent to paste and mucilage, why not use other forms of transparent paper?

A. The only other form of transparent paper, aside from tissue paper, which would be entirely useless in the manufacture of envelopes, is tracing paper. Tracing paper is also rather brittle, but the main objectionable feature in the use of tracing paper is the cost of same. Tracing paper is one of the most expensive papers on the market. The cost of tracing paper would prohibit its [117] use, in the manufacture of commercial envelopes.

Recess.

To be more exact, the cost of the paper alone, if tracing paper were used, in making envelopes, would be from \$5.00 to \$10.00 per thousand. This price does not include printing or manufacturing the en-

(Testimony of Max M. Cohn.)

velops, and as good commercial envelopes can be sold for less than \$1.00 per thousand, it is very evident that no successful envelopes can be made from tracing paper. One of the reasons that tracing paper is so expensive it has to be made so that a draftsman in using it can apply ink on its surface by the use of a pen, or other drawing instruments. Therefore, tracing paper cannot be made out of an oily preparation. One other objectionable feature to tracing paper is that it lacks sufficient transparency to make an address very clearly legible through same.

By Mr. TOWNSEND.—I offer in evidence the piece of tracing paper used by the witness in his last answer, and ask that the same be marked Complainant's Exhibit "S."

Q. 30. What is the objection to using tissue paper or some other form of transparent paper for envelopes of this character? [118]

A. Everyone knows that tissue paper could not be used in making a commercial envelop; one of the functions of an envelop being to protect the enclosure. Tissue paper would tear too easily for this purpose. I know of no other transparent paper that would be suitable for making envelopes.

Q. 31. As a general proposition does the ordinary commercial tissue paper or transparent paper have sufficient inherent rigidity or stiffness to make it suitable or practical for envelopes, especially those that are to be used for mailing purposes?

A. No. They are of a very flimsy character, especially so when there is no enclosure in them to

(Testimony of Max M. Cohn.)

stiffen them up. It would be impossible to make salable envelopes out of any transparent paper now in the market.

Q. 32. In answer to Q. 23, you say you made up some hand-made envelopes using transparent paper, and printing the same with opaque ink. State how exhibit "R" was made and if that was a hand-made envelope or not.

A. Exhibit "R" was made by taking a piece of transparent paper and printing from a zincograph with an opaque ink. The sheet thus prepared was cut out and notched in the same manner as described with reference to exhibit "P," and then pasted by hand.

Q. 33. That is what you meant by a hand-made [119] envelope in your answer to Q. 23?

A. Yes. Any envelope folded and pasted by hand is considered a hand-made envelope, as distinguished from those that are folded and pasted by machinery.

Q. 34. Is this exhibit "R" the first of the specimens you made of this type of envelope; or had you embodied this idea in concrete form in any way before you produced this particular specimen exhibit "R," which shows the return address of the Illinois-Pacific Glass Company?

A. My recollection on this envelope is not so clear on account of the early abandonment of this idea. I think, however, that before producing this particular envelope I made some with a solid block not showing the return card as is shown on the exhibit "R."



(Testimony of Max M. Cohn.)

Q. 35. Was this envelop exhibit "R" a commercial success?

A. No, it was not, and I made no attempt to place them on the market, either in this country, or anywhere, and have allowed my British patent to lapse, for nonpayment of annuities under the English law.

[120]

Q. 36. Referring to your envelopes from opaque stock, represented by exhibit "L," did you encounter any difficulty in the way of overcoming the objection to the oily preparation creeping into the body of the opaque stock?      A. Yes.

Q. 37. What were they, and how did you solve the problem?

A. I had a great deal of difficulty in getting a suitable ink to overcome this objectionable feature. I experimented with all manners of ink that I could find in the market, without success.

Q. 38. Please state first what you did to overcome the objection of the creep of the oil into the opaque stock; in other words, what is it appearing upon your envelop exhibit "L," that is designed primarily to overcome that objection?

A. I printed a border around the space that was treated with the oily preparation. As explained in my former answer I had great difficulty in getting a suitable ink for this purpose, as the oily preparation had a great tendency to come through almost any ink that I used, and finally I had a special ink manufactured for this purpose. I think that Mr. Regenstein, who appears to be the real defendant in

(Testimony of Max M. Cohn.)

this case, must have experienced the same difficulty.  
[121]

Q. 39. Have you any tangible evidence to substantiate your belief as to the difficulties met by Mr. Regenstein?

A. Yes. I have in my possession envelopes manufactured by the Transo Paper Co. as late as 1906 and 1907 which show that even at that late date Mr. Regenstein had not solved this problem, as the oily preparation can be clearly seen through the ink that he used in making his border. (Witness produces a bunch of envelopes.)

By Mr. TOWNSEND.—I offer herewith in evidence, as Complainant's Exhibit "T," a bunch of envelopes, ten in number, just referred to by the witness; these envelopes all bearing the imprint "Transo" on the interior tinted surface and with one exception, having the Transo Paper Company's name, address and the words, "Pat. Aug. 9, 1904," on the back; the exception being the case of the Mandel Bros. envelop which instead of having the Transo Company's name on the back, is marked, "Damerson-Pierson Co. Ltd. Licensee, New Orleans, La." On the face of the several envelopes appears the return cards of the following parties and post-office cancellation stamp:

The Ford & Johnson Co., Chicago, Ill. Postmark,  
Chicago, Ill. Oct. 3, 1906.

Standard Paper Co., Milwaukee, Wis. Postmark,  
Milwaukee, Wis. Dec. 3, 1906. [122]

(Testimony of Max M. Cohn.)

Lee McDonough, Waukegan, Ill. Postmark, Waukegan, Ill. Dec. 3, 1906.

Reid, Murdoch & Co., Chicago. Postmark, Chicago, Ill. Dec. 5, 1906.

Standard Oil Co., Chicago, Ill. Postmark, Chicago, Ill. Dec. 12, 1906.

Amberg File & Index Co., Chicago, Ill. Postmark, Chicago, Ill. Dec. 31, 1906.

John Sexton & Co., Chicago, Ill. Postmark, Chicago, Ill. Apr. 20, 1907.

Illinois Stationery Company, Rockford, Ill. Postmark, Rockford, Ill. Apr. 24, 1907.

Mandel Brothers, Chicago, Ill. Postmark, Chicago, Ill. Jun. 15, 1907.

F. G. Diefenbach, Grocer, Blue Island, Ill. Postmark, Blue Island, Ill. Oct. 3, 1907.

Q. 40. Have you any other early specimens of the Transo Company's envelops?

A. Yes. I have an envelop made by the Transo Company for Montgomery Ward & Company of Chicago, bearing their card, and the postmark, "Chicago, Ill. Jun. 20, 1907." (Witness produces.)

Q. 41. What is there peculiar about that Montgomery Ward envelop, if there is anything peculiar?

A. The peculiarity of this envelop is that the border and tint block are both applied on the same side of the paper, and in this way it differs from the general style of Transo envelop. It is very evident that the border, tint block and advertising matter [123] were printed with one operation, and in this respect it is exactly identical with the Zellerbach

(Testimony of Max M. Cohn.)

Company envelop made by me and described as exhibit "L."

By Mr. TOWNSEND.—I offer in evidence the Montgomery Ward & Co. envelop last referred to, and ask that it be marked, Complainant's Exhibit "U."

Q. 42. Referring to the enclosure which appears in your envelop exhibit "L," bearing the address, "A. B. Adams, Boston, Mass.," will you explain with reference to that particular enclosure.

A. This enclosure is a blank statement form printed for the Simplex System Company of San Francisco, and bears the quotation, "Modern Methods." This statement form was to be used in connection with my patented system called, "Combination Statement and Collection Record"; application for said patent being filed in the United States Patent Office, May 5, 1904, and bears Ser. No. 206,481, patent issued to me, under date of March 21, 1905, #785,291; said patent showing drawings in almost the exact duplicate of this statement. The arrangement of the addressing space on this statement is purposely made to fit the envelops, as described in exhibit "L." The arrangement of this statement is considerably out of the ordinary.

Q. 43. Would the address, "A. B. Adams," etc., [124] on this statement, or any other address appearing on the statement in the place reserved for the address, be visible through the window of the Transo envelop, for instance, if this statement was placed in a Transo envelop?



(Testimony of Max M. Cohn.)

A. If this statement was placed in a Transo envelop, the entire address would not show, and part of the printed portion, that is not supposed to appear in the addressing space, would be plainly visible.

By Mr. TOWNSEND.—I offer the patent last referred to by the witness, #785,291, March 21, 1905, application filed May 5, 1904, for Combination Statement and Collection Record, Max M. Cohn, as Complainant's Exhibit "V."

Q. 44. Is there any connection between this statement blank just referred to, and your envelop exhibit "L"?

A. The connection between the statement and envelop is that the manner in which the statement is folded shows that it was to be used in connection with my envelop exhibit "L," because statements folded in opaque envelops are never folded with the address [125] on the outside, and the statement folded in the manner described will not fit any other transparent window envelop, on the market. This proves that I had this envelop in mind when I designed this statement and had the drawings prepared for the Patent Office. I wish to explain further that the statement referred to has been in the possession of Mr. Townsend, my Patent Solicitor and Patent Attorney, and he has taken same from the original files in his office.

By Mr. TOWNSEND.—Counsel for complainant states that if called and sworn he would testify that this statement has been continuously in the file of the Cohn Abandoned Application Envelop Ser. 207,082,

(Testimony of Max M. Cohn.)

filed May 9, 1904, from some time in the year 1904, and from a date earlier than November 4, 1904, but how much earlier I am unable to state, the date of the amendment, previously referred to. Counsel would further state that these old files of the Cohn cases along with other cases in his office at the time of the fire were saved by him personally; our offices being located then in the Clark Building, 330 Market Street, corner of Front and Battery Streets. At the request of Mr. Cohn to examine our original office file wrapper for his application for patent on "Statement and Collection Record," and which resulted in the aforesaid Patent #785,291, to see if the same contains any samples of statements [126] similar to the one just referred to, I would say that I have examined said file and find some old specimen papers and statements from which the original drawings for the patent #785,291 were made, and these papers are now offered in evidence as Complainant's Exhibit "W."

Q. 45. In answer to Q. 19 you stated that before you left the Glass Company in October, 1903, you had made up several envelopes by cutting out the blank with a pair of scissors and pasting it by hand. Did you show such hand-cut, hand-pasted envelopes to anyone at that time?      A. Yes.

Q. 46. Can you mention the name of anyone to whom you showed them?

A. I know that I showed them to Mr. Bean, as previously stated.

Meeting adjourned until February 25th, 1911, 10 A. M. [127]

(Testimony of Max M. Cohn.)

San Francisco, February 25, 1911, 10 A. M.

Parties met pursuant to adjournment. Present as before.

By Mr. COHN.—I have gone over the testimony given yesterday, and would like to supplement to my answers to Q. 20, Q. 21, and Q. 22, and also Q. 45 and Q. 46, referring to the envelops made while I was still connected with the Glass Company, which were cut out with a pair of scissors and pasted by hand, by adding the statement that I am not positive that I retained these samples up to the time of the fire, and there is a possibility that I may have destroyed them before that date. I worked persistently and continuously on this envelop from the time of the conception of my idea up to the time of filing my patent, and during this period I accumulated a vast number of specimens, some of which I destroyed from time to time. I do know positively, however, that I had a great many specimen sheets and envelops that were burnt up at the time of the fire, April 18th, 1906. The envelops entered as exhibits by me are those taken from Mr. Townsend's files, some that I had at my home, which was not burned, and the particular sample marked exhibit "M," which [128] bears the postmark Nov. 27, 1904, I carried in a pocket-book, and had same on my person at the time of the fire.

Q. 47. When did you first learn of the Transo envelop, or Mr. Regenstein?

A. Either in the spring or summer of 1905. My attention being attracted to this envelop by seeing

(Testimony of Max M. Cohn.)

them come through the mail to the Zellerbach Company, with whom I was connected.

Q. 48. Did you ever have any negotiations with him in regard to your device?

A. Yes. Very shortly after seeing the envelopes mentioned above, I communicated with Mr. Regenstein, calling to his attention the fact that I had envelopes of the same character as the ones that he was manufacturing, and that I had a patent pending in the Patent Office of the United States. I called his particular attention to the advertising feature and suggested to him that it might be well for us to get together in some way in the manufacture and marketing of these envelopes. I received a reply very promptly from Mr. Regenstein in which he wanted a little more information as to the character of my envelop and the method of producing same; he being particularly anxious to know if he could not cheapen the production of envelopes of this character. I remember very distinctly that we exchanged four or five [129] letters, all of which I had carefully filed away, but unfortunately, these letters were also burned up in the fire of April 18, 1906.

Q. 49. You say that you called Mr. Regenstein's attention to the fact that you had envelopes of the same character as his, and that you had a patent pending. What envelopes of yours do you refer to, and what application do you refer to?

A. I refer to the envelopes which were made with an unpunctured face of relatively opaque stock, and treated with a transparency forming preparation the



(Testimony of Max M. Cohn.)

same as exhibit "L"; also the envelop with the advertising feature of the same character as exhibit "Q." The application I refer to was the one filed November 8, 1904, Ser. No. 231,886, which resulted in patent #835,850.

Q. 50. Do you recall the time of this correspondence with Mr. Regenstein?

A. My correspondence began either late in the spring or early in the summer of 1905.

Q. 51. You say that Mr. Regenstein wanted a little more information as to the character of your envelop, and the method of producing same. Did you give him such information? [130]

A. I did. About September 2, 1905, I sent Mr. Regenstein samples of the various envelops that I had produced up to that time. Realizing the importance of this step, I registered this communication, which included the samples.

Q. 52. How do you fix that date?

A. I still have in my possession the registry return receipt, which is dated September 6, 1905, at Chicago, Illinois, and signed by Julius Regenstein. This receipt I carried in the same pocket-book with the envelop exhibit "M." I herewith produce this receipt. (Witness produces receipt.)

By Mr. TOWNSEND.—The registry return receipt referred to by the witness is offered in evidence as Complainant's Exhibit "X." This receipt bears the Chicago postmark September 6, 1905, and the San Francisco postmark of its receipt back dated Sep. 9, 1905.

(Testimony of Max M. Cohn.)

Q. 53. What were the contents of your registered letter for which exhibit "X" was the receipt?

A. I remember very distinctly that [131] I sent Mr. Regenstein a sample envelop such as used by A. Zellerbach & Sons, which is the same as exhibit "L"; also a sample of an envelop showing the border around the transparency in the shape of a cigar, a pickle and a cascaret, or rather a series of four cascarts side by side. I explained to Mr. Regenstein that I thought this advertising feature would help the sale of this character of envelop very materially, as it was a novelty, and that this element was always sought by firms who did a great deal of advertising.

Q. 54. Were there three separate advertising envelops? Is that what you mean by referring to the pickle-shaped, cigar-shaped, etc.?

A. Yes. Each design mentioned was on a separate and distinct envelop.

Q. 55. Did any of those samples bear any resemblance to any of the exhibits now before you, aside from exhibit "L," which you have just mentioned?

A. Yes. They resembled exhibit "Q."

Q. 56. In what way was the pickle one like exhibit "Q"?

A. The envelop which had the pickle design [132] had a green border with the word "Heinz" printed above the pickle and "57 Varieties," printed below the pickle.

Q. 57. Describe the cascaret envelop.

A. The cascaret envelop was made by using a design which represented four cascaret tablets, placed

(Testimony of Max M. Cohn.)

end to end, with the word "Cascarets" printed above this design, and the motto "They work while you sleep," below the design. The transparent addressing space showed inside the outline of the four cascarets.

By Mr. TOWNSEND.—The witness in his explanation has made a sketch which is offered in evidence as Complainant's Exhibit "Y."

Q. 58. Were these samples which you sent Mr. Regenstein at that time actual one-piece envelops showing the several designs mentioned, or were they merely drawings, or sketches indicating the idea of an envelop for a pickle or cigar or cascaret or fragments of envelops suggesting such a design? [133]

A. These specimens referred to were complete envelops in every respect; the printing on same having been done on a printing-press and were not color sketches or fragments of envelops, as Mr. Regenstein testified was his recollection in answering Q. 176 on pages 63 and 64 of the defendant's testimony.

Q. 59. Did you get any reply from Mr. Regenstein in answer to that registered letter, and if so what did it say?

A. I have a very distinct recollection of the contents of the letter which Mr. Regenstein sent me in reply to my communication enclosing the samples above referred to. He stated that he had just severed his connection with a concern that made a specialty of color work; that he was tired of satisfying cranks and that he did not care to engage in any business except that of making ordinary envelops. He

(Testimony of Max M. Cohn.)

stated further, and I will try to use his exact language, "I have a patent and you have not." He further expressed his doubts as to my being able to cover my invention with a patent, and practically turned down a proposition of any sort. The letter above described was received by me some time in September, 1905, and was burnt up by the fire of April 18, 1906. I had no further correspondence [134] with Mr. Regenstein until United States Patent #835,850 was granted, dated November 13, 1906, and very shortly after I heard of the issuance of this patent I wrote to Mr. Julius Regenstein, under date of December 4, 1906, and I still have the original carbon copy of the letter sent him at that time, and I herewith produce same. (Witness produces letter.)

Q. 60. Do you know what patent was referred to in Mr. Regenstein's statement, "I have a patent and you have not"?

A. I have no doubt that Mr. Regenstein referred to the Reese patent #766,902, dated August 9, 1904, which is the patent date appearing on all envelopes put out by the Transo Paper Company, which I understands is the company that Mr. Regenstein is connected with.

By Mr. TOWNSEND.—I ask that the carbon copy of the letter last referred to by the witness be copied into the record, and the same is as follows:



(Testimony of Max M. Cohn.)

12/4/06.

Mr. Julius Regenstein,  
Chicago, Ill.

Dear Sir:—

I beg leave to refer you to U. S. Patent #835,850, Nov. 13, 1906, issued to me and to invite you [135] to resume with me the negotiations heretofore suspended by reason of your doubts concerning the patentability of my invention.

It is important that this matter be given your earnest attention at once, for, now that the delays of the Patent Office are over, I propose marketing my envelopes, and must soon know whether arrangements with you are to be made.

Of more importance still is the fact that the envelopes you are now manufacturing, a sample of which I enclose is an infringement of my patent as you will see by reference thereto.

As matters of this kind can be gone into much more satisfactorily in personal interviews, I believe it would be to your interest to come to San Francisco immediately, so that we may go over the matter thoroughly.

Please advise me at once whether I may expect you in connection with the above matter.

Sincerely yours,"

Q. 61. In the above letter you refer to a specimen envelop enclosed. What was the character of that specimen if you recall?

A. It was a regular stock envelop of the Transo Paper Company bearing the imprint, "Pat. Aug. 9, 1904," and of the same general character as the bunch

(Testimony of Max M. Cohn.)

of envelopes entered as exhibit "T." [136]

Q. 62. Did you receive a reply to that letter?

A. I did. I received a letter from Mr. Julius Regenstein, dated Chicago, December 10th, 1906, and have the original letter in my possession, and now produce same. (Witness produces letter.)

By Mr. TOWNSEND.—I ask that the letter just referred to be copied into the record; said letter being as follows:

"TRANSO PAPER COMPANY.

Makers of

TRANSO

Envelopes

148 East Division St.

Phone North 1015.

Chicago, Dec. 10, 1906.

Max W. Cohn,

416 Jackson St.,

San Francisco, Cal.

Dear Sir:

I have your favor of Dec. 4th and in reply wish to state that we have made envelopes with a ring to cover the spreading of the oil, at least one year before you handed in your application. The idea, therefore was [137] not at all novel and was very old as far as we were concerned.

It is very true that you have a patent which I could have obtained if I cared for it. This feature of a ring is very immaterial and we never considered it of very much consequence. We have made very successful experiments in making envelopes without a

(Testimony of Max M. Cohn.)

ring, and expect to have nothing else in the future, on the market, but such envelopes as mentioned. We take pleasure in enclosing you a very good envelope which has no ring. If you have anything to offer which is new, and of advantage to us, we would like to hear from you.

Yours very truly,

(Signed) JULIUS REGENSTEIN."

MK. JR.

Q. 63. This letter is apparently addressed to Max W. Cohn. Who is Max W. Cohn?

A. This was evidently an error on part of the stenographer, the letter was undoubtedly intended for me as it refers to a letter written by me under date of December 4th, 1906, which is the letter already copied in the records, and I received the letter in due course.  
[138]

Q. 64. In this letter of December 10, 1906, of Mr. Regenstein's, he says, "We have made envelopes with a ring to cover the spreading of the oil, at least one year before you handed in your application." In your correspondence in 1905 with Mr. Regenstein had he said anything about how long he had had the ring, or about its importance or nonimportance?

A. He made no mention of the ring in any of his previous letters.

Q. 65. Mr. Regenstein also says, "This feature of a ring is very immaterial and we never considered it of very much consequence. We have made very successful experiments in making envelopes without a ring and expect to have nothing else in the future on

(Testimony of Max M. Cohn.)

the market but such envelopes as mentioned." Have you ever seen any Transo envelops without a ring?

A. I have not.

Q. 66. However, Mr. Regenstein says that he encloses you, "a very good envelop which has no ring." Did you receive such an envelop?

A. I did with the letter and now produce same. (Witness produces.)

Q. 67. In your opinion, state whether or not [139] that is a Transo envelop.

A. My opinion as to the envelop referred to is that it is not a Transo envelop. It is made in an entirely different manner than the regular stock Transo envelop and I feel reasonably certain that this envelop was not produced in the United States. It has all the appearances of a foreign-made envelop.

Q. 68. Did you have any further correspondence with Mr. Regenstein?

A. Yes. On December 17th, 1906, I replied to Mr. Regenstein's letter of December 10th, 1906, and have in my possession the original carbon copy of my reply.

By Mr. TOWNSEND.—I ask that the letter just referred to be read into the record; said letter being as follows:

"12/17/06.

Julius Regenstein, Esq.,

Chicago, Ill.

Dear Sir:—

Your letter of Dec. 10th with its enclosure is at hand. From it, I note your rejection of my offer to



(Testimony of Max M. Cohn.)

co-operate in the manufacture of envelopes under my [140] patent and shall be guided accordingly.

It is my purpose to fully protect my patent, and I therefore require that you refrain from all infringement thereof.

Yours truly,"

Q. 69. Do you agree with Mr. Regenstein's statement that the feature of a ring is very immaterial and of no consequence? A. I do not.

Q. 70. For what reason?

A. I consider the ring of utmost importance, for the reason that it was this feature that made the one-piece, unpunctured, window envelop a commercial success; no one-piece envelop having been used commercially before I put out my envelopes with a ring or border in November, 1904. Ever since that date the envelop seems to be gaining in popularity and even as late as to-day, notwithstanding the present suit I received a communication from the Panama Pacific International Exposition, which was enclosed in one of the Transo envelopes. I might take this occasion to state that this envelop which I now produce is a far superior specimen to the bunch previously produced and marked [141] exhibit "T," but it shows the border around the transparency as a prominent feature and would indicate that Mr. Regenstein has at last solved the problem of being able to print a border which will obliterate the objection of the transparency forming preparation creeping into the surrounding opaque stock.

By Mr. TOWNSEND.—I offer in evidence the en-

(Testimony of Max M. Cohn.)

velop just referred to and ask that it be marked, Complainant's Exhibit "Z."

I offer in evidence the Regenstein letter of December 10th, 1906, which appears on pages 100 and 101, of the present record and ask that it, with the ringless envelop referred to, be marked as Complainant's Exhibit "AA."

Recess. [142]

By Mr. COHN.—Supplementing my answer and completing same to Q. 70, I wish to state that although Mr. Regenstein has solved the problem of making a proper border he has not solved the problem of making a window envelop without the border, as stated in his letter of December 10th, 1906, and although over four years have passed since I received this letter Mr. Regenstein still adheres to the border. Unquestionably, Mr. Regenstein has discovered the same as I have, that printing the border entails considerable expense, and if it were possible to produce a salable, commercial, window envelop without this border, Mr. Regenstein would do so. The operation of applying this border requires the utmost care and skill, as the ink used must be just of the proper consistency and applied with utmost care. It is therefore, self-evident that no one would resort to the border if they could accomplish the same result without it, especially as envelops are sold on an extremely close margin of profit and any saving of expense would be gladly embraced by a manufacturer.

Q. 71. Mr. Regenstein at pages 106 to 109, defendant's record has testified that a Mr. Callahan [143]

(Testimony of Max M. Cohn.)

offered to sell him your patents which are here in suit. Did you ever authorize such offer and if you had any arrangements with Mr. Callahan will you please state just what they were.

A. I never authorized any one to offer my patents to Mr. Regenstein, but on July 29th, 1909, I gave one E. H. Callahan an option to buy my patents. This option extended to January 2d, 1910. Mr. Callahan however, did not avail himself of the option that he secured and I have no knowledge what offers he may have made while this option was in force. I received as a consideration of this option Fifty Dollars (\$50.00); the terms of the option being that I was to receive from Ten Thousand Dollars to Fifteen Thousand Dollars for my patents, the purchase price depending upon the month that the sale would be consummated, for instance, if the sale would be made on or before August 2d, 1909, I was to receive Ten Thousand Dollars, the sum of One Thousand Dollars being added for every month's delay that the option continued to run. As stated before, the option expired on January 2d, 1910, no sale resulting therefrom.

Q. 72. Were you ever aware of Mr. Callahan offering your patents for sale to Mr. Regenstein or Regenstein's Company? [144]

A. I had absolutely no knowledge of it.

Q. 73. Are you familiar with Defendant's Exhibit Brown 1862 patent? A. I am.

Q. 74. Brown's patent says, "The other part of my invention consists in an improved envelope, or wrap-

(Testimony of Max M. Cohn.)

per D. The improvement is, to make the envelope or wrapper, transparent, sufficiently to clearly show the cards of address through its face. There may be only a transparent portion B, large enough to exhibit the 'direction' through it; and this may be made either by rendering a portion of the envelope, or wrapper, itself transparent by the same means or substances as employed for making tracing paper, or any other, in the process of manufacturing the paper, or the envelope, leaving the remainder of the envelope opaque." I will ask you Mr. Cohn, first, if you are familiar with Tracing paper and the method or means for making it, and generally as to the manufacture of transparent paper.

A. I am familiar with it.

Q. 75. Will you outline the method of manufacture and then consider the quotation above with respect to [145] making envelopes according to the Brown formula.

A. It is very evident that Mr. Brown had absolutely no knowledge of the paper business, nor had he tried to manufacture envelopes in accordance with his own specifications. It is impossible to make paper transparent in spots by the same means as making tracing paper. It is also foreign to the art of paper making to make a sheet of paper which will be partly opaque and partly transparent. Any one familiar with the manufacture of paper knows that a sheet must be uniform from end to end, and cannot be produced with transparent spaces as Brown evidently thought could be done. The same is true of



(Testimony of Max M. Cohn.)

tracing paper; it being impossible to treat a sheet so that it would be transparent only in certain predetermined places. Mr. Brown further shows his ignorance of the paper business by stating, "the cost of manufacturing the improved envelopes will scarcely, if any, exceed that of ordinary envelopes now in use. For while the additional cost of rendering the envelopes and wrappers transparent, will be but little, a cheaper quality of paper may be employed, not requiring to be finished so highly as for receiving the pen." Had Mr. Brown been familiar with the paper business he would not have made a blunder of this kind [146] because instead of requiring a cheaper paper, it requires a paper costing four or five times as much as ordinary envelop paper in order to render it transparent by "the same means or substances as employed for making tracing paper." Summing up, I might state that it would be entirely impractical to make a suitable commercial envelop in the manner described in the Brown patent. This statement is substantiated by the fact that no commercial envelopes were ever produced under the Brown patent.

Q. 76. I will invite your attention to Defendant's Exhibit, Brown 1862, patented envelop appearing in defendant's record opposite page 372, and I will ask you if that exhibit according to your understanding of the Brown patent embodies the invention of the Brown patent and according [147] to Brown's disclosure? A. No, it does not.

Q. 77. Please state your reasons.

A. The exhibit referred to has not been rendered

(Testimony of Max M. Cohn.)

transparent by the same means or substances as employed for making tracing paper, as disclosed in the Brown patent, the shape and location of the transparency is entirely at variance with the drawings shown in the Brown patent. The quality of the paper is no doubt different than Brown intended to use in the envelop that he had in his mind, because it is a paper finished for taking the pen, whereas he explains that he would use a paper not finished for that purpose. The opening in the envelop suggested by Brown was evidently intended to be very small, only allowing room enough for a finely printed card to show through and it was never intended, nor was it claimed to be used, as an envelop through which an address on a folded enclosure would show through, and which is exemplified in the exhibit referred to. As stated by defendant's counsel on page 374, of the defendant's testimony, the envelop referred to "was made by the Transo Company on the same kind of paper used for their stock envelops and the same printing places for applying the oil used in making it that is used for the stock envelop, but with the [148] tinted matter omitted from the inner side of the paper, and the ring or border omitted around the window on the outside." This statement made by Mr. Banning probably explains, better than I can, the existing differences. Mr. Brown's patent is entirely silent as to the use of oil, he makes no mention in his specifications of using printing plates and I am sure would never accomplish the result here produced in this exhibit if he followed his own specifications.

(Testimony of Max M. Cohn.)

Summing up therefore, I fail to recognize any resemblance between the exhibit referred to and the imaginary envelop described by Mr. Brown.

Q. 78. Are you familiar with the Defendant's Exhibit, Busch British Patent of 1896?     A. I am.

Q. 79. Mr. Bond says on page 376, D. R., on referring to this Busch patent, "both Figs. 1 and 2 show a border around the outer edge of the envelop, with the portion within the border transparent." Will you indicate the border in Figs. 1 and 2 of the Busch patent?

A. It is impossible for me to indicate this border as no border exists. [149]

Q. 80. Then, you disagree with Mr. Bond as to the existence of a border in Figs. 1 and 2 of Busch?

A. I do. It is evident that Mr. Bond mistook the outline of the enclosure shown in these drawings, Figs. 1 and 2, for a border. A careful inspection, however, of the drawings in question prove conclusively that there is no border shown. Both Figs. 1 and 2 show the enclosure as is natural in such instances, to rest toward the bottom of the envelop. Therefore, the space which Mr. Bond inadvertently took for a border is much narrower on the bottom line than on the top line of the drawing. This difference is noted in both Fig. 1 and Fig. 2, but is more strongly emphasized in Fig. 2. It is reasonable to suppose that if a border were to be shown it would be uniform on all sides. Fig. 2 shows a broken section of the envelop with the enclosure still remaining in place. Had there been a border on the envelop face it would

(Testimony of Max M. Cohn.)

not have shown in the place that is torn away to show the enclosure.

Q. 81. Looking at Figs. 1 and 2 of Busch, has the face of this envelop any portion at all that is opaque or nontransparent? [150]

A. No. The entire face of the envelop is transparent.

Q. 82. Mr. Bond on page 398, D. R., in referring to the envelop No. 1, shown opposite page 400, says, "It is also a representation shown in Fig. 1 of the drawing in which the front of the envelop is *nearly all* transparent, with a border surrounding the transparent portion of the envelop." According to your previous statement, is Mr. Bond correct?

A. No. He is mistaken, the entire face of the envelop shown in this drawing of the Busch patent is transparent.

Q. 83. Referring to these envelops, Defendant's Exhibit, Busch, 1896, Nos. 1, 2 and 3, appearing opposite page 400, D. R., are those envelopes, or either of them, commercial, practical envelops suitable for the uses to which your envelops and the Transo envelops have, or are put, that is, as a mailable commodity?

A. No. None of the envelops mentioned are practical or salable. In my previous testimony I have explained the undesirable features of an envelop made from transparent stock. [151] All of these objectionable features are present in the exhibits referred to. Briefly summarized, the objections are as follows: They are brittle and flimsy. They do not seal



(Testimony of Max M. Cohn.)

readily. They do not hold the stamp with sufficient strength. It would be impossible to postmark Busch specimens 2 or 3, owing to the dark background made necessary to kill the transparent nature of the paper. Busch specimen No. 1, when used in connection with a white enclosure, would have all the characteristics and appearance of a "mourning" envelop. They would not serve as safe closures and would be torn and disfigured in the mail. They would find no sale on the market.

Q. 84. Referring to Defendant's Exhibit, Busch envelope transparent stock appearing opposite page 402, D. R., Mr. Bond was asked Q. 12, "What do you understand to be the nature of the material or preparation used to make the transparent stock for the Busch envelop?" Mr. Bond's answer was, "Some material having the property of transforming paper of an opaque character into paper of a transparent character. So far as my knowledge goes *paraffine* is one of the materials ordinarily used for making paper transparent, but any material having the requisite [152] oily property could be employed for the purpose, such *oily* substance or material being of a nature to make the paper, when dry, with a solid surface that would not interfere with its use as an envelop, or for any other purpose, and which would not give a *greasy* appearance or produce a *greasy* effect with the use of the envelope." I have emphasized certain words, by underscoring them. Was this envelop Busch transparent stock made by treating opaque paper with *paraffine*, or other oily substance?

(Testimony of Max M. Cohn.)

A. No.

Q. 85. Do you know how it was made, and if so, please state.

A. The paper used in the manufacture of this envelop was never an opaque paper. It comes from the paper machines in transparent form just as it now appears, and has never been treated with paraffine or oil of any description, since it left the paper machine. The process of making this paper transparent has long been confined to some special mills in Germany, and it has only been but very recently, say within the last two years, that two mills have started manufacturing this character of paper in the United States; the duty having been recently raised on this commodity [153] to such an extent that it has been an inducement for some of the foreign paper makers to undertake the manufacture of this character of paper in the United States. The resultant transparency of this paper is occasioned by the various ingredients that are put in the beaters during the process of its manufacture. The firm of the Zellerbach Paper Company, with whom I am connected, are one of the largest, if not the largest importers of this character of paper in the United States. This paper is used very extensively by the dried fruit packers. Therefore, there is a large sale of this paper in California.

Meeting adjourned until February 27th, 1911, 10 A. M. [154]

San Francisco, February 27th, 1911, 10 A. M.

Parties met pursuant to adjournment. Present as before.

(Testimony of Max M. Cohn.)

(Witness Continuing:) There is nothing of an oily or greasy preparation used in the manufacture of this transparent paper. It is known to the trade as a grease-proof paper, and as stated before, is principally used to pack around food stuffs of various kind; delicatessen stores using it to wrap packages of slices of ham and bacon. It is also used for packing sandwiches, etc. The various ingredients that go to make up a finished paper are mixed with the pulp at the time of manufacturing same and the sheet is then drawn through calendars or rolls, which give it the highly glazed appearance that it has, but no chemical or oil of any kind is applied to the paper from the time it leaves the paper machine. To explain the calendars or rolls in paper making a little more fully, I would state that calendars are pressure rolls, sometimes run hot and at other times cold and the function of these calendars is to put a surface or glaze on the paper. I spoke of but two mills making this character of paper in the United States. One of these has been in operation for about eight or nine years [155] in Hartford City, Indiana, operating only in a small way. It has only been within the past two years that they have come into much prominence.

Q. 86. Please look at Defendant's Exhibit January, 1904, envelopes No. 1 and No. 2, appearing in defendant's record opposite page 30, and state, if you know, how those envelopes were originally cut and formed.

A. The envelopes referred to, Defendant's Exhibit

(Testimony of Max M. Cohn.)

No. 1 and No. 2, known as January, 1904, envelops, were cut with a regular envelop die. Dies of this character are quite expensive and are only kept at envelop factories. The envelops, no doubt, were folded and pasted by hand; the gum on the sealing flap also being applied by hand. The work, however, was done by an expert envelop-maker, as no amateur could have made as perfect an envelop, and when I say a perfect envelop I only refer to the construction of the envelop, and not to the transparent portion, which I do not consider perfect. It is a very difficult matter for an inexperienced person to fold and paste an envelop by hand, so as to give same a neat and finished appearance. It is still more difficult for an inexperienced person to apply the gum on the flap. The envelops [156] in the exhibits referred to were prepared in the manner that is customary with experienced hand-made envelop-makers, and is accomplished by taking a series of envelops with the flaps turned up or opened out, one on top of the other, spacing same apart so as to leave sufficient width exposed along the edge of the flap to take the gum. A brush previously dipped in the gum is then run over the exposed edges by hand, applying the gum to each one successively, with the brush always moving in the direction of the opened-up flaps. Anyone familiar with the envelop business can immediately recognize envelops prepared in this manner, because the extreme ends generally show an abrupt square appearance, parallel with the ends of the envelops. They are further identified on account of the inner



(Testimony of Max M. Cohn.)

edge of the gummed area being parallel with the outer edge of the flap. I illustrate this by pasting two of Regenstein's 1904 envelops together, so that one flap overlies the other; these envelops being duplicates of defendant's exhibits produced in the record, as No. 1 and No. 2, January, 1904, envelops.

By Mr. TOWNSEND.— [157] I offer in evidence the envelops just referred to in illustration by the witness, as Complainant's Exhibit "BB"; which envelops are two specimens furnished me by the counsel for defendant at the time of the taking defendant's testimony.

(WITNESS Continuing:) In order to more fully illustrate this matter, I herewith produce three machine-made envelops pasted together in the same manner, showing that the gum on the flap is applied in a different way, that is, the gum on each envelop is applied separately or individually from every other envelop, instead of in series. The ordinary method of making envelops by machine is as follows: A series of envelop blanks having been previously die-cut are fed to an envelop machine. A plunger to which gum has been applied, drops down on these series of blanks picking up the top-most blank and carrying it to the folding device, which joins three of the extending parts or flaps, leaving the sealing flap, to which the gum has been applied, disengaged. They are then transferred to a carrier, passed over or under [158] a fan which dries the gum on the sealing flap.

By Mr. TOWNSEND.—I offer in evidence as

(Testimony of Max M. Cohn.)

Complainant's Exhibit "CC," the three machine-made and pasted envelopes, referred to by the witness in his illustration.

Q. 87. Could you manufacture transparent envelopes like that illustrated by the so-called Busch envelop, opposite page 400 and page 402, D. R., by machinery?     A. No.

Q. 88. Why?

A. Owing to the highly glazed surface of the paper used in these envelopes referred to, it is impossible to get a gum or adherent that would work successfully in a machine. It is possible to paste the body of the envelop by using a heated glue or a specially prepared substance, but substances of this character would be useless when applied to the sealing flap, because as everyone knows, the gum to be used on a sealing flap must be of such a nature that it can easily be affected by moisture, so that an [159] envelop can be sealed either by being moistened by saliva or with a sponge, etc. I might state here that I omitted to mention this objection in my previous testimony in reference to these transparent envelopes, but it is one of the most serious of the many objectionable features.

Q. 89. Was this objection of sealing the envelop or the objection of manufacturing the envelop by machinery apparent to you at the time you got up your transparent stock envelopes, exhibit "R," and on which your application, later abandoned, was based?

A. No. I did not realize that I was running into

(Testimony of Max M. Cohn.)

any difficulty of this sort. You will notice from the exhibit referred to, that there is no gum on the sealing flap. It will also be noticed that in the Defendant's Exhibit of Busch envelops opposite page 400 and page 402, that there is no gum on the sealing flaps. This first became apparent to me when I consulted some envelop makers in reference to making an envelop of this character by machinery. I was informed that it was practically impossible to make envelops of this character by machinery; one reason being that on account of the character of the paper [160] the plungers had a tendency to pick up more than one sheet at a time, but the main objection was that no suitable gum could be found that would work successfully in a machine for making envelops of this character, that is, for gluing the body and gumming the sealing flap.

Q. 90. Whom did you try to get to make these transparent stock envelops, exhibit "R"?

A. The United States Envelop Company of Worcester, Mass.

Q. 91. And they turned down the proposition for the reasons stated? A. They did.

Q. 92. Calling your attention again, Mr. Cohn, to the defendant's January, 1904, envelop exhibits, I would ask you to examine the so-called transparent portion of those envelops and state whether or not they disclosed any evidence of this transparent portion being of less density or thickness than the body of the envelop due to a greater pressure having been applied to this portion of the envelop? [161]

(Testimony of Max M. Cohn.)

A. They do not.

Q. 93. Do they indicate any other treatment of the paper than that due to the application of the oil and border as outlined by Mr. Regenstein in his testimony? A. They do not.

Q. 94. Are you familiar with the Defendant's Exhibit Boldt British patent #29,956, of 1897?

A. I am.

Q. 95. From your experience in the paper business state whether or not the wrapping device shown in this Boldt patent, is practical for the uses and purposes for which your envelop exhibit "L" and the Transo envelop and the Heinz envelop were and are designed and used.

A. No, it is not practical for such purposes.

Q. 96. State your reasons.

A. The main objection in trying to use a wrapper of this kind for a commercial envelop would be the cost of making same, [162] Boldt in his patent explaining that a covering such as mica, gelatine or celluloid could be used as a covering over an opening in an envelop or wrapper. Any one of the substances named are too high in price to be put to practical use in a commercial envelop, and this particular feature has been brought to a much more practical state by A. F. Callahan in his patented two-piece envelop, known as the "Out-look Envelop," Callahan 1902 patent, now in evidence. I cannot, however, see how either the Boldt or Callahan patent can have any connection with the envelops referred to, Ex. "L," and



(Testimony of Max M. Cohn.)

defendant's envelops, as they are unpunctured one-piece envelops.

Q. 97. State what you find, if anything, in the Boldt patent to suggest or disclose either the feature of your second advertising patent here sued on, or the Heinz envelop, alleged to be an infringement of that patent.

A. I find nothing in this patent that would suggest or disclose anything either referring to the features of my second patent or in the Heinz envelop, referred to. [163]

Q. 98. Mr. Bond has stated at page 310, D. R., "that the inventor Boldt intended and had in mind to utilize the transparent window or opening as a means for delineating a *trademark or name*, or other symbol, or any design or symbol *for the purpose of advertising*." Will you please point out if you can, where Boldt's drawings show any trademark or name, or any advertising feature in connection therewith, or any advertising feature in connection with any symbol or design?

A. I can point out no such feature as the drawings in question do not disclose any. The only drawing shown outside of an ordinary opening intended for the display of merchandise, is Figure 8, which shows a letter "N." This drawing however is absolutely meaningless, and does not convey to the mind an advertising feature of any sort, as there is no printed matter in conjunction with same, and the letter used might stand for needles, noodles, necklaces, or any articles which would begin or end with the letter

(Testimony of Max M. Cohn.)

“N.” It is plain to be seen that an envelop with this shaped opening could not be practically used for an addressing space, owing to the peculiar construction of said opening. I notice in Boldt’s specification that he says, “the same purpose may be effected by painting or embossing [164] or otherwise delineating a trademark or a name, or other symbol, or device upon the transparent covering as indicated in Figure 9.” Inspection, however, of Figure 9 does not disclose any such matter described by Boldt, and if it did it would entirely defeat the object of my second patent and the Heinz envelop referred to, in making the address on an enclosure unreadable.

Q. 99. What does Figure 9 to your mind represent?

A. Figure 9 to my mind represents a merchandise wrapper or envelop with a square opening cut therein and a piece of celluloid or mica pasted behind this opening and completely bridging the opening in every direction, or closing the opening, as expressed by Boldt, the inventor.

Q. 100. Referring to your preceding answer, if you can picture what Boldt had in mind when he referred to Figure 9, what did you mean when you said that doing what Boldt contemplated in Figure 9, “would entirely defeat the object of my second patent and the Heinz envelop referred to, in making the address on an enclosure unreadable”? [165]

A. It is impossible for me, or anyone else, to picture what Boldt had in his mind by the description furnished. In my previous answer I stated that it

(Testimony of Max M. Cohn.)

would entirely defeat the object of my second patent. I wish to correct this, as I meant to say it would defeat one of the objects of my second patent, which object is to have a transparent addressing space, unobstructed by any printing, painting or embossing upon said transparent addressing space, as probably indicated by Boldt in his specifications but not shown in any manner in the drawing Boldt referred to. Bold's entire object, as disclosed by his specifications was the displaying of various articles of merchandise, and it is very evident from his specifications and description that he had absolutely no other object in mind. While a wrapper such as described by Boldt might be practical to cover articles of merchandise that retail as low as 5¢ or 10¢ apiece, it would never be practical for a commercial envelop, because as explained before, the cost of manufacturing would be entirely too great, nor could a package or wrapper as described by Boldt, be commercially produced in an envelop machine.

Recess. [166]

By Mr. COHN.—During the recess I made two models showing the Boldt Figures 8 and 9, and herewith produce same. (Witness produces models.) I have marked them, "Boldt Figure 8" and "Boldt Figure 9," respectively.

By Mr. TOWNSEND.—I offer the two models in evidence, and ask that the model of Figure 8 be marked Complainant's Exhibit "DD"; and the model of Figure 9 be marked, Complainant's Exhibit "EE."

(Testimony of Max M. Cohn.)

Cross-examination.

(By Mr. BANNING.)

XQ. 101. This patent of yours that you have produced, #785,291, of March 21, 1905, for Improvements in Combination Statements and Collection Records does not show or describe the envelop of your first or second patents sued on, or any other envelop, does it? A. No. It does not. [167]

XQ. 102. I notice this patent was applied for May 5, 1904. Had you ever applied for a patent of any kind prior to that date? A. No.

XQ. 103. This abandoned application Ser. No. 207,082, filed May 9, 1904, which we compared with your British patent #14,478, of 1904, applied for June 27th, 1904, as I understand, is substantially for the same subject matter as is disclosed in your British patent. Is this correct? A. It is.

XQ. 104. And both your abandoned application and your British patent were for an envelop made from paper or stock transparent as distinguished from opaque; is not that correct?

A. Yes. The paper to be used for envelops described in the abandoned patent application and in the British patent as described in your question was to be of transparent paper.

Q. 105. Was this abandoned application filed May 9, 1904, the second application that you ever filed in the United States Patent Office for a patent? [168]

A. It was.

XQ. 106. When was your next application filed in the United States Patent Office?

A. November 8, 1904.



(Testimony of Max M. Cohn.)

XQ. 107. That was for your first patent in suit?

A. It was.

XQ. 108. When was your next application filed?

A. January 17th, 1905, as a division of the application filed November 8, 1904, which resulted in my second patent in suit.

XQ. 109. Then, as I understand you, between the date of filing your abandoned application May 9, 1904, until you filed your application for the first patent in suit, November 8, 1904, you filed no applications in the United States Patent Office for patents. This is correct is it? A. That is correct.

XQ. 110. Referring to this abandoned application filed May 9, 1904, for the same subject matter as your British patent, I find by looking at the certified [169] copy of the proceedings in the Patent Office, that this application was rejected by the Examiner June 15, 1904; that it was amended and argument presented by your attorney November 4, 1904; was again rejected December 6, 1904; was again amended and argued January 25, 1905; was again rejected February 23, 1905; was again amended March 25, 1905; was again rejected April 20, 1905; was again amended May 4, 1905; was again rejected May 25, 1905; was asked to be reconsidered June 2, 1905; and was again rejected June 24, 1905, after which no further proceedings appear to have been had in the case; I have *corrected* enumerated these actions and dates in this abandoned application as they appear in the certified copy, have I not? A. You have.

XQ. 111. As I understand, this envelop exhibit

(Testimony of Max M. Cohn.)

“R” is produced by you as a sample of the envelop described in your 1904 British patent; is that a correct understanding? A. It is.

XQ. 112. I believe the drawings of your abandoned application and of your British patent are identical. That is correct, is it? A. It is. [170]

XQ. 113. I notice that your British patent was taken out in your name, and also in the name of John Charles Shipp, both of this city; who is this Mr. Shipp?

A. Mr. Shipp was until very recently connected with the Illinois-Pacific Glass Company.

XQ. 114. He is not, and so far as you know never has been, a manufacturer of paper or envelops. Is this correct? A. That is correct.

XQ. 115. Did he ever have any interest in your United States patents sued on? A. He did not.

XQ. 116. His connection with the patents was confined to this British patent; was it? A. It was.

XQ. 117. You told us about an option that you gave at one time to a Mr. Callahan. What relation is he, if you know, to A. F. Callahan, whose 1902 patent has been offered in evidence in this case?

A. He is A. F. Callahan's brother. [171]

XQ. 118. I believe the Outlook Envelop Company, or a company of some such name, is manufacturing the Outlook envelops shown and described in the Callahan 1902 patent. This is your understanding, is it not? A. It is.

XQ. 119. Where is the Outlook Company, so designated, located? A. In Chicago, Illinois.

(Testimony of Max M. Cohn.)

XQ. 120. And where does this brother of A. F. Callahan live, if you know?

A. To the best of my knowledge his last address was Sebastopol, California.

XQ. 121. Is this Mr. Callahan or A. F. Callahan, or the Outlook Company interested in any way in the outcome of this litigation, or assisting in any way to carry it on?

A. I refuse to give any information in reference to who, if anybody, is assisting me in the matter of this suit.

XQ. 122. Has anyone an option on the patents in suit, or is there any understanding in reference to the purchase or sale of same dependent upon the outcome of this litigation? [172]

A. I refuse to give any information concerning points of this character, as I believe that this is a matter which is entirely my own affair.

XQ. 123. I asked these questions because Mr. Regenstein is of the belief that the competitor of the Transo Company—The Outlook Envelop Company—is back of or behind this litigation, and so I thought it only fair to give you an opportunity to deny that such was the case, if you desired. With this explanation I again give you an opportunity.

By Mr. TOWNSEND.—Without registering any formal objection against this line of questions, I would say that the only possible relevancy or materiality such evidence pro or con could have, would be as affecting complainant's title, and his right to sue, and the right to equitable relief here asked. If coun-

(Testimony of Max M. Cohn.)

sel wants to ask the witness if he owns the patents sued on and counsel is not satisfied with the answer or with the testimony given in the *prima facie* case of complainant that the witness owns these patents, he of course is free to offer his proofs that the facts are otherwise. [173]

A. There is no desire on my part to enlighten Mr. Regenstein on this subject.

XQ. 124. The Outlook Envelop Company, if that be the proper name of the concern, has been manufacturing the Outlook envelops like those shown and described in the Callahan 1902 patent for a number of years. Has it not? A. It has.

XQ. 125. And these envelops are manufactured and used in very large quantities, are they not?

A. I believe they are.

XQ. 126. The defendant's exhibit, Callahan patented envelop opposite page 371 of the D. R., shows one of these Outlook envelops, as you are familiar with them, does it not? A. It does.

XQ. 127. Aside from the order of 10,000 envelops which you say you furnished Zellerbach & Sons in November, 1904, what other orders for such envelops have you ever filled? A. No others. [174]

XQ. 128. What was the business of the Illinois Pacific Glass Company, with which you were connected?

A. They were in the business of manufacturing bottles, and dealing in bottlers' supplies of all kinds; also were engaged in the printing of labels of every description.



(Testimony of Max M. Cohn.)

XQ. 129. I believe you stated that you were an officer of the Glass Company. Did I correctly understand you?

A. Yes. I held the position of Secretary with this corporation.

XQ. 130. I suppose you were also a stockholder in the Glass Company? A. I was.

XQ. 131. Are you still an officer or stockholder in the Glass Company?

A. No. I am neither an officer nor a stockholder.

XQ. 132. You are an officer and stockholder in the Zellerbach Company, are you?

A. I am Secretary of the Zellerbach Paper Co., and own a small amount of stock. [175]

XQ. 133. In answering Q. 12, you spoke about making an envelop with the window in the shape of a cigar, and with the words, "Cremo" above the window, and "Cigar," below it. Have you any of those Cremo envelops? A. I think not.

XQ. 134. To refresh your recollection, I will ask you if it was not a Cremo cigar envelop that you sent to Mr. Regenstein when you sent him some in the registered letter in the first part of September, 1905?

A. My recollection is that I sent Mr. Regenstein a sample of the Cremo cigar envelop, also a sample of the Perfect cigar envelop, such as shown in exhibit "Q."

XQ. 135. At the time Mr. Regenstein was examined and asked about the matter on cross-examination he was unable to remember and to produce any

(Testimony of Max M. Cohn.)

of the samples that you sent him. Do you think you would recognize the sample of the Cremo cigar that you sent Mr. Regenstein if I am able now to produce the same? A. I can. [176]

XQ. 136. I show you a Cremo cigar envelop and ask you to look at it and see if you recall it as the one that you sent to Mr. Regenstein.

A. I do. It is one of the early specimens embodying the advertising feature and was produced at the printing office of F. H. Abbott & Company. It looks like a rather complete envelop and not a fragment of an envelop; it also has all the appearance of a printed envelop and not a sketch produced with a brush or pen or ink, as stated by Regenstein in his testimony in answering X question 176, p. 62 and 64, D. R.

XQ. 137. I suppose you regard this Cremo cigar as exhibiting or illustrating the envelop claimed in your second patent. Do you? A. It does.

By Mr. BANNING.—Defendant's counsel suggests to complainant's counsel that if he desires to introduce the Cremo cigar envelop in evidence he will give it to him for that purpose.

By Mr. TOWNSEND.—I offer this Cremo cigar envelop proffered by defendant's counsel, in evidence as Complainant's Exhibit "FF." [177]

XQ. 138. This Cremo envelop is an envelop with the transparent window in the form of a cigar with a solid green border extending from the outline of the cigar to the edges of the envelop in every direction, and overlapping so as to present a green surface

(Testimony of Max M. Cohn.)

extending in from a quarter of an inch to a slight half inch all around the edges of the back, and with the word "Cremo" above the outline of the cigar, and the word "Cigar" below the outline, appearing in white letters through the green border, evidently being the original white of the paper from which the envelop was made. This substantially describes the envelop, does it not?

A. That is a very good description of the envelop, and it is made precisely after the specifications and drawing Fig. 2 of my second patent.

XQ. 139. Mr. Townsend, in speaking of the transparent stock envelop, exhibit "R," mentioned that it was one that he had in the files of the May 9, 1904, abandoned application from a time before, though he does not remember how long before, November 4, 1904, on which date as appears from the letter to the Patent Office filed November 4, 1904, a sample was submitted to the Patent Office with such letter. Please look at the envelop exhibit "R," and state how nearly, if at all, it corresponds with your recollection of the sample submitted to the Patent Office with the letter filed [178] November 4, 1904.

A. My recollection of this is that I furnished Mr. Townsend with several styles of these transparent paper envelops. I am unable to state which ones he enclosed in the letter mentioned.

By Mr. BANNING.—Defendant's counsel requests complainant's counsel, if he has no objection, to state his recollection as to whether or not the sample submitted to the Patent Office with the letter

(Testimony of Max M. Cohn.)

of November 4, 1904, in the abandoned application, was a fac-simile of the envelop offered in evidence as exhibit "R."

By Mr. TOWNSEND.—I have no doubt but that this present envelop exhibit "R" is a fac-simile of the one filed at the time specified in the Patent Office, for these reasons:

1. This envelop exhibit "R" was found and was the only one found in our office file of this abandoned Cohn application.

2. I have carefully examined the file and the correspondence which I carried on at that time on behalf of our firm and Mr. Cohn with our Washington associate, Mr. T. W. Fowler, who [179] represents us before the Patent Office and who generally prepares the amendments, according to our suggestions. I find a carbon copy of a letter of October 24, 1904, in this file, addressed to Mr. Fowler, and referring to this case in which appears the following paragraph:

"We enclose a sample to show how the sender's name card appears in transparency in the corner." And this letter generally embodies the subject matter used by Mr. Fowler in the amendment of November 4, 1904, addressed to the Patent Office. I also find a carbon copy of a letter in this file addressed to Mr. Fowler and dated May 2, 1904, which is as follows.

"May 2, 1904.

Mr. T. W. Fowler,

Dear Sir: In the accompanying case Max M. Cohn, Envelop, we beg to enclose samples of the invention



(Testimony of Max M. Cohn.)

together with old style perforated envelops.

Note difference in our envelop when statement is enclosed and when not enclosed.

Yours truly,"

Whether these samples of the invention sent May 2, 1904, were duplicates of exhibit "R," with the transparent name card in the corner. [180] I cannot recall.

XQ. 140. After the communication of November 4, 1904, had been filed with the envelop accompanying it as appears from the certified copy of the abandoned May 9, 1904, application, and on January 25, 1905, as appears from such certified copy, the specification was amended by inserting a description of the sender's return card in transparent letters in the corner of the sample envelop filed; is not this correct? A. It is.

XQ. 141. How far, if at all, do you consider that the envelop, exhibit "R," and the envelop described in your British patent and in your abandoned application, embody or illustrate the envelop described and claimed in your two patents herein sued on? [181]

A. There is only one point of similarity, inasmuch as both are envelops with an unpunctured face.

XQ. 142. Do you consider that the envelop exhibit "R," and the envelop described in your British patent and in your May 9, 1904, abandoned application contains or embodies the invention described and claimed in your two patents sued on? A. I do not.

Meeting adjourned until February 28th, 1911, 10 A. M. [182]

(Testimony of Max M. Cohn.)

San Francisco, February 28th, 1911, 10 A. M.

Parties met pursuant to adjournment. Present as before.

Cross-examination.

(By Mr. BANNING.)

XQ. 143. As I understand you, this abandoned application filed May 9, 1904, was your first application for a patent on envelops. A. It was.

XQ. 144. These specifications of this abandoned application contain, among other things, a paragraph reading as follows,—does it not; namely,

“I do not wish to be understood as limiting myself to colored paper or paper to be colored, since there are other means for accomplishing the result here desired which is that of producing an imperforate envelop having a generally opaque surface and a limited transparent portion.”

A. It does.

XQ. 145. This same paragraph, except in the plural, is found in your British 1904 patent in evidence. A. It is. [183]

XQ. 146. I believe there was never any appeal taken to the rejection of this May 9, 1904, abandoned application; this is correct, is it not?

A. Nothing was done to my knowledge except what is shown by the certified copy of the application.

XQ. 147. And this certified copy shows no appeal to the Board of Examiners-in-Chief or to the Commissioner, does it? A. It does not.

XQ. 148. When we compared this certified copy of the abandoned May 9, 1904, application with your

(Testimony of Max M. Cohn.)

British 1904 patent the other day we found that the specifications and drawings of the application and of the patent were substantially alike, but that there was some difference in the claims of your application as filed and the claims of your British patent. As I am not offering this certified copy of the application in evidence, I will ask you to read into your answer to this question the claims of the application as the same was filed May 9, 1904.

A. The claims of the abandoned application as filed are as follows: [184]

"1st. As a new article of manufacture an envelop having an imperforate face portion generally opaque, but provided with a limited transparent portion through which a sendee's name and address on an enclosure may be legible.

"2nd. As a new article of manufacture an imperforate envelop having a generally opaque surface and a limited transparent portion.

"3rd. An envelop blank comprising an unpunctured sheet having a generally opaque surface with a limited transparent portion.

"4th. As a new article of manufacture, an imperforate envelop having a generally opaque colored surface and a limited transparent portion.

"5th. An envelop having an unpunctured face and provided with a transparent space for the sendee's name and address to show through, said space surrounded by a generally opaque colored field.

"6th. An envelop blank consisting of a suitable sheet of transparent paper colored except for a suit-

(Testimony of Max M. Cohn.)

able space for writing or printing to show through, the colored body of the envelop being comparatively opaque. [185]

“7th. As a new article of manufacture, an envelop having an imperforate face portion imprinted on its inner side to render it generally opaque but leaving a limited transparent area through which a name and address on an enclosure may show through.

“8th. As a new article of manufacture, an envelop formed from transparent stock and having an interior opaque lining except for a limited area through which writing or print may be read.

“9th. As a new article of manufacture, an envelop formed from transparent stock and colored on its inner side to render the envelop generally opaque except for a limited area which is transparent to allow writing or print to show through.

“10th. As a new article of manufacture an envelop blank of transparent material imprinted to leave only a comparatively limited transparent area through which writing or print is legible.

“11th. As a new article of manufacture, an envelop formed from transparent material, the transparency of said material having been destroyed except for a limited area for a name and address contained on an enclosure to show through. [186]

“12th. An envelop blank of transparent stock rendered opaque except for a comparatively limited space through which writing or print may be legible.”

XQ. 149. I notice some of these claims specifically call for the application of the ink on the inside of



(Testimony of Max M. Cohn.)

the envelop. Is that the way the envelop exhibit "R" has the ink or coloring matter applied?

A. It is. The ink is applied on the inside on exhibit "R."

XQ. 150. You have produced a bunch of ten Transo envelops mailed as seen from the postoffice cancellation stamp during the years 1906 and 1907, which you say shows the oil through the colored ring or border surrounding the window, I believe. Do you consider that these ten Transo envelops offered in evidence as a bunch, as Complainant's Exhibit "T," exhibit or contain the elements specified or called for in the claim of your first patent sued on, notwithstanding, as you say, the fact that "the only preparation can be clearly seen through the ink used in making the border"?

A. I consider that the envelops covered by exhibit "T" contain all the elements of the claim [187] of my first patent sued on. The fact that the oil shows through the ring or border is caused by not using a suitable substance to make this border. It is apparent, however, that the only object of the ring is to cover the objectionable feature caused by the spreading of the oil and it partly accomplishes this object.

XQ. 151. In answering Q. 42, in speaking of the statement contained in exhibit "L" and addressed, "A. B. Adams, Boston, Mass.," you say that, "the arrangement of the addressing space on this statement is purposely made to fit the envelop, as described in exhibit 'L.'" You mean that the state-

(Testimony of Max M. Cohn.)

ment has been purposely folded to bring the addressing space beneath the window of the envelop exhibit "L," do you not?

A. No. I meant in my answer that the arrangement of the printed matter on this statement was of such a nature that when folded it would fit the envelop mentioned, and I think if you refer to my further testimony on this subject, I also speak of the manner in which it is folded.

XQ. 152. In answering Q. 43, asking you about the statement in the envelop exhibit "L," addressed to Adams, you say that, "if this statement was placed in a Transo [188] envelop the entire address would not show, and part of the printed portion that is not supposed to appear in the addressing space would be plainly visible." This grows out of the fact that the windows in your envelops, like exhibit "L," and in the Transo envelops are not located in the same place in the face of the envelops, and that the statement has been folded with special reference to the location of the windows in your envelops; is not this correct?

A. That is correct, and is just exactly what I wish to convey; that is, I desire to show that I had my own envelops in mind when I had printed the statement in question.

XQ. 153. The windows in your envelop are located higher up from the bottom of the envelop than are the windows in the Transo envelops; are they not?

A. They are, but in my specifications I do not limit myself as to the location, size, or shape of the

(Testimony of Max M. Cohn.)

window addressing space.

XQ. 154. If we took this envelop sent you by Mr. Regenstein in his letter of December 10, 1906, which has no ring or border, and printed on to it the ring or border of these various Transo envelops in evidence, the transparent window within the ring [189] or border would be of the shape and size shown in these various Transo envelops, would it not? A. Not exactly.

XQ. 155. I mean the transparent space enclosed within the ring would be of the same size and shape as the transparent space enclosed within the ring of the Transo envelops in evidence, would it not?

A. Obviously it would, but if the ring used on the Transo envelop was applied on the ringless envelop it would leave a portion of the transparent space exposed beyond the outer outline of the end of the ring, and would therefore result in an unsightly envelop. In the Transo envelop which I am using for measurement, the area to which the oil has been applied and showing its spread shows by actual measurement on the inside of the envelop the following dimensions: [190]  $1-15/32'' \times 4-31/32''$ ; while the ringless envelop mentioned shows by actual measurement a transparent area which is  $5-1/4'' \times 1-9/16''$ . The ring used on the Transo envelop by actual measurement shows that its greatest outside dimensions are,  $5-3/16'' \times 1-5/32''$ ; and that window space appearing within the Transo ring is,  $4-13/16'' \times 1-5/16''$ .

XQ. 156. In answering Q. 70, you say that you consider the ring or border as of the utmost import-

(Testimony of Max M. Cohn.)

ance. The reasons for your opinion are because the presence of the border gives definition to the enclosed transparent space, covers up and conceals any objectionable or unsightly appearance caused by the irregular or ragged outlines resulting from the running or spreading of the transparency producing preparation, and gives a more finished, or ornamental appearance to the job, or to express the matter more briefly, the border is primarily to cover defects, and secondarily to enhance the beauty and value in some cases. Is not this a brief summary of the objects, uses and purposes of the border mentioned in the claim of your first patent sued on?

A. It is.

XQ. 157. As I understand, your criticisms of the [191] envelop offered to illustrate the Brown 1862 patented envelop, on page 372 of the defendant's testimony, you base such criticisms on the grounds, first, that the illustrative exhibit envelop, "has not been rendered transparent by the same means or substances as employed for making tracing paper as disclosed in the Brown patent"; second, that, "the shape and location of the transparency is entirely at variance with the drawings shown in the Brown patent"; and, third, that "the quality of the paper is no doubt different than Brown intended to use in the envelop that he had in mind, because it is a paper finished for taking the pen, whereas he explained that he would use a paper not finished for that purpose." This statement substantially presents the reasons and grounds advanced by you for criticising the defend-



(Testimony of Max M. Cohn.)

ant's illustrative envelop, does it not?

A. This does not cover all the reasons, but is substantially correct as far as it goes. In my answer to Q. 77, I failed to state, because I had fully explained same in my previous answer to Q. 75, and thought it would be a repetition, that the envelop, Exhibit Brown 1862 patented envelop opposite page 372 D. R., was not produced from paper that was manufactured with a transparent space [192] as Brown imagined it could be, and now add this to my criticisms of the envelop referred to.

By Mr. TOWNSEND.—I do not understand that counsel for defendant claims, in view of his statement, p. 374, D. R., that this envelop opposite page 372, D. R. is a Brown envelop, or constructed according to Brown's directions.

XQ. 158. In order to ascertain your understanding of the Brown 1862 patent, I will ask you if you consider that Brown is limited to any specific *method* of manufacturing the paper out of which his envelops are to be made, or to any specific *means* or substances for producing the transparent spaces that he desired, or to any specific *shape* and *size* of his transparent windows, or to any specific *quality* of paper to be used; and that because the defendant's exhibit does not, in your opinion, correspond to the Brown patent in all these particulars, you do not consider the defendant's exhibit envelop, opp. p. 372 of D. R., a substantially correct illustration of the envelop of the Brown 1862 patent.

A. I do not think that defendant's exhibit envelop

(Testimony of Max M. Cohn.)

referred to contains any of the elements described in the Brown specification. The part of your question [193] referring to the limitations of Brown's patent I consider to be answered more comprehensively by a patent attorney.

XQ. 159. Let us compare the defendant's exhibit envelop illustrating the Brown 1862 patent offered at page 372 of the D. R., and the envelop described in the Brown patent, and see how far they contain matter in common. First, they are both envelops; second, both envelops are made from opaque stock; third, both envelops have transparent spaces or windows in their fronts or faces; four, both envelops have these transparent spaces formed by some means or substances that are adapted to render paper transparent where the same is applied; fifth, both envelops have the transparent windows of a size and shape to permit the address on the enclosure for which they were made to show through the windows; sixth, both envelops have the remainder of the face or front opaque; and, seven, both envelops are one-piece, transparent window envelops. Are not the various features mentioned above common to the defendant's exhibit under consideration and to the envelop disclosed in the Brown 1862 patent?

By Mr. TOWNSEND.—The question is objected to in so far as it relates to the Brown patent, on the ground, first, that the patent itself is the best [194] evidence of Brown's alleged disclosure, and, secondly, that the statement in the question as to what Brown discloses lacks justification and basis in the patent.

(Testimony of Max M. Cohn.)

A. No, for the following reasons: First, the envelop used for illustrating the Brown 1862 patent is an envelop, whereas Brown in his specifications says, "Envelop or wrapper D." By referring to diagram D of the Brown drawings you cannot tell whether he had in mind an envelop or a wrapper, there being no distinction in any of the drawings; second, the so-called Brown exhibit, opp. page 372, D. R., is made from opaque stock. Brown may or may not be made from opaque stock. His specifications call for both and his drawings describe neither. Third, the so-called Brown exhibit has a transparent space or window in its face, while the Brown patent may have a space or hole, covered or uncovered by transparent material, the drawings and specifications in the Brown patent being silent as to the method of construction. Fourth, the so-called Brown exhibit has been rendered transparent by the use of an oily preparation. The Brown patent mentions no such method. Fifth, the so-called Brown exhibit [195] has a transparent window of a size and shape to permit the address on the enclosure to show through, while the Brown patent only calls for a small, oval-shaped opening to permit a finely printed card to show through, according to the drawings shown. Sixth, the so-called Brown exhibit has the remainder of the face or front opaque, while the Brown patent may be either transparent or opaque, the specifications calling for either construction, and it is impossible to tell from the drawings whether they were intended to be opaque or transparent. Seventh, the

(Testimony of Max M. Cohn.)

so-called Brown exhibit is a one-piece transparent window envelop, while the envelop described in the Brown patent may be either a one or two-piece envelop; it being impossible to tell from the drawings whether same is a one or two-piece envelop.

XQ. 160. I omitted to ask you on what grounds the claims of your abandoned application filed May, 9, 1904, were rejected. By referring to office letter of June 15, 1904, it appears that all of the claims were rejected "as being substantially anticipated in either of the British patent to Busch, #11,876, July 4, 1896, and Backe #4,465, March 14, 1889, or the United States patent to Brown #36,393, Sept. 9, 1862." This is correct, is it not? [196]

A. Yes.

XQ. 161. The specification of the Busch British 1896 patent among other things says that, "a portion of the front may be transparent, while the rest of the envelop is opaque." This is true of the envelop exhibit "R," is it not? A. It is.

XQ. 162. This is also true of the envelop defendant's exhibit Busch 1896 envelop No. 1, is it not.

A. It is.

XQ. 163. It is also true of the defendant's exhibit Busch 1896 envelop No. 2, is it not? A. It is.

XQ. 164. The specification of the Busch patent says that, "the back and a portion of the front may be transparent." This is true of the defendant's exhibit Busch 1896 envelop No. 3. Is it not?

A. It is.

Recess. [197]



(Testimony of Max M. Cohn.)

XQ. 165. Referring to this ringless envelop sent you by Mr. Regenstein with his letter of Dec. 10, 1906, do you see any very marked or perceptible running of the preparation that was used to make the transparent face?

A. There are slight indications of running in the specimen referred to.

XQ. 166. So far as the transparency is concerned, what would you say as to this ringless envelop being a merchantable or practical envelop?

By Mr. TOWNSEND.—The question is objected to as irrelevant and immaterial, as it has not been claimed or shown by defendant that this so-called ringless envelop constitutes any part of the prior art.

A. From my knowledge of this business, which was acquired after many months of study and actual work, I know that a transparency such as shown on this specimen cannot be produced mechanically in order to make it a commercial success. It is true that I or any one familiar with this line of work could produce one or several specimens of this kind, but I know they cannot be produced mechanically, which [198] would make them a commercial success.

XQ. 167. Referring to this envelop, exhibit "R," do you think that such envelop illustrates or exemplifies the envelop of your first patent, in suit?

A. I do not, in any respect.

XQ. 168. Referring to the claim of your first patent in suit, do you find any reference in such claim

(Testimony of Max M. Cohn.)

as to whether the preparation for rendering a portion transparent is to be applied to one side of the paper and the colored or tinted border is to be applied to the other side of the paper?

A. There is no mention of this in the claim, but in the body of the specifications I find the following:—

“Usually, and perhaps preferably, the preparation and coloring matter are applied on opposite side of the blank, the preparation on the inside and the coloring on the outside.”

XQ. 169. Do you consider that an envelop made by applying the oily preparation and the colored or tinted border on the same side of the paper instead of on opposite sides would be an envelop which contained or embodied the envelop of the claim of your first patent in suit? [199]

A. I do. I believe that wherever the combination of an oily preparation with a ring or border on an envelop it would come within the scope of the claim.

XQ. 170. Referring to this Perfecto envelop, marked exhibit “Q,” what is the part that you regard as the border, called for in the claim of your first patent in suit?

A. I consider all of that portion of the printed matter that surrounds the transparent portion and accomplishes the desired result of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding stock, to be the border.

XQ. 171. The entire face of this envelop, exhibit

(Testimony of Max M. Cohn.)

“Q,” outside of the transparent portion or window, is covered by the printed matter; is it not?

A. Practically, with the exception of small spaces, which indicate the matches, and the small line of shading around the letters, which are the original color of the paper.

XQ. 172. Referring to the decision of the [200] Commissioner, or rather the Acting Commissioner, dated August 1, 1906, which was copied into the record preceding your examination, I find in the certified copy a brief filed by your attorney marked, “Brief on behalf of Appellant,” which brief was not copied with the opinion of the Acting Commissioner; that is correct, is it not?

By Mr. TOWNSEND.—The exhibit “J,” filed, is a certified copy of both the brief referred to and of the decision, and only the decision was copied because the brief was naturally in the form of an argument, but if counsel for defendant desires we are perfectly willing to have the brief also copied into the record.

XQ. 173. As your counsel has answered the last question for you, and as I do not desire to cumber up the record unnecessarily, I will ask you if we do not find in this brief or argument shown in the certified copy referred to, the following statement:

“It is important to note that the coloring matter which is employed to render the semi-transparent piece opaque and the preparation for rendering transparent [201] that portion of the already semi-transparent field or window, are applied not

(Testimony of Max M. Cohn.)

to the same but to different sides of the sheet or piece.” A. We do.

XQ. 174. After asking you XQ. 164, and before asking you XQ. 165 this afternoon, the witnesses, Samuel Ely Selling, Barton T. Bean, A. Vanderzweip, John C. Tooker, and Edward Epting were examined, were they not? A. They were.

Meeting adjourned until March 2, 1911, 10 A. M.  
[202]

San Francisco, March 2d, 1911, 10 A. M.

Parties met pursuant to adjournment. Present as before.

By Mr. BANNING.—In looking over the testimony I find that no statement from me was placed on the record in reply to the statement of complainant’s counsel following XQ. 157, and in order that my position may not be misunderstood, I desire to say that I do consider and claim that the envelop offered and inserted in the defendant’s record, opposite page 372, is in all substantial respects, a fair model or illustration of the envelop described and claimed in the Brown 1862 patent.

XQ. 175. Referring again to the certified copy of the decision of the Acting Commissioner, allowing the application of your first patent in suit, and to the brief filed by your attorney before the Commissioner, I find the following statement, do I not, namely:

“Now, it is a fact that grease or oil applied to paper will spread more upon that surface of the sheet to which it is directly applied than upon the



(Testimony of Max M. Cohn.)

opposite surface. This probably is due to [203] capillary attraction and to the oil following more quickly the direct path offered by the fibres which lie upon the side nearest to that to which the oil is applied; and if this side is an unprinted one or one to which a coloring matter has not been applied to make the paper opaque, the 'creeping' effects of the oil will be more pronounced, as the printing ink itself would retard the same if on the same side as the grease, although it will not obliterate or almost entirely conceal the same, and the ragged line which would bound the transparent window would be unsightly and the window itself would not be sharply defined and have a neat finished appearance."

A. Yes. And immediately following there appears in the brief the following statement: "It is for the purpose of obliterating and concealing the ragged outline of the window due to the 'creeping' of the oil used to make the window transparent, and to give definition to the window, and not as a mere matter of ornamentation, as the examiners-in-chief suggest, that we employ a colored [204] or printed border as a surrounding for the transparent window. Thus we obtain a new result, namely, we may make a transparent window in an unpunctured sheet of paper which is printed on one side to render the portion outside of the window opaque, and then we apply over the already printed surface a relatively heavy darker border to serve to obliterate the bad 'creeping' effect of the oily matter used on the unprinted area of the printed sheet. When the col-

(Testimony of Max M. Cohn.)

ored preparation is used on one side of the sheet and the grease applied to the opposite side of the unprinted area, as we describe, we reduce the 'creeping' effects of the oil to minimum, and obtain an envelope of commercial value, and the only envelope of this type which has proved commercially valuable.

"The reference of the examiners-in-chief to the Brown patent and their opinion that if the directions given in the patent are followed, there would result an envelope like ours, is clearly erroneous because Brown only describes the common printing to render the sheet opaque, and he does not even suggest the advisability of using, or the need for, a separate border to obliterate and conceal certain bad effects due to rendering an unpunctured sheet transparent by oily matter.

"Brown describes two types of envelopes in [205] one of which the sheet is punctured to form a window opening, and over this opening he pastes a previously oiled and separate piece, the objections to which are fully stated in our former brief.

"The British patents cited, one of which is applicant's, also do not disclose the salient feature of this case, namely, the novel and useful border applied about the window for the purpose before alluded to, and therefore are not pertinent references for the claims appealed.

"There is certainly a patentable invention involved in this case and we think it fairly expressed in the claims appealed." I will state that the Transo envelops herein in controversy, are produced ex-

(Testimony of Max M. Cohn.)

actly as explained in the foregoing statement, and the same desired object accomplished.

XQ. 176. If the green border on the Heinz envelop, exhibit "C," and the brown border on the Stickney envelop, exhibit "E," were extended from the edges of the transparent portion solid to the edges of the face of the envelop as the green solid border is extended on this Cremo envelop, exhibit "FF," would there be any transparent portion or window in such envelops representing a pickle or cucumber, or a cigar, or any other article of manufacture?  
[206]

A. If solid colors were applied around the already printed brown and green borders of the envelops mentioned, you would still be able to distinguish a pickle and cigar, on account of the shading used in producing these effects. For instance, in the cigar the veins of the wrapper and the ash are plainly visible and would not disappear if the solid color were printed to the edge of the envelop.

XQ. 177. You have not answered my question which is simply this: if solid green and brown borders were printed on the Heinz and Stickney envelops instead of the borders which are now on them and extended solid out to the edges of the face of the envelops, would the transparent windows represent a pickle, or cigar, or other article of manufacture?

A. No; and the desired object would not be accomplished, that is, of producing an advertising device which the envelops in their present form do produce.

XQ. 178. If solid borders extended from the edges

(Testimony of Max M. Cohn.)

of the transparencies or windows out to the edges of the face of the envelops were used, instead of the [207] pickle-shaped and cigar-shaped borders now on the Heinz and Stickney envelops, the windows or transparencies in such envelops would simply be of the form and size of the windows or transparencies in the Transo stock envelops, would they not?

A. No. I consider the windows on the Transo stock envelops to be a combination of the transparency and the printed border. If the envelops mentioned were printed as you suggest, they would have a very different appearance than the Transo stock envelop.

XQ. 179. I am speaking of the transparent portions in these Heinz and Stickney and stock envelops; with solid borders on the Heinz and Stickney envelops extending out to the edges of the face of the envelops the transparent portion in all of the envelops under consideration would be of the same size and shape, would it not?

A. In my previous answer I tried to show the connection of the transparency to the ring or border in the Transo stock envelop. If this feature is eliminated and a colored portion applied merely around the transparent portion the result would be a window of irregular outline depending upon the form taken by the preparation [208] after its application to the paper.

XQ. 180. I am not eliminating the border, but I am trying to direct your attention simply and solely to the transparent portion or window included *within*



(Testimony of Max M. Cohn.)

the borders of the Heinz, Stickney and stock envelops, and I ask you if the transparent portion considered by itself alone, in all of these envelops is not of the same size and shape.

A. If you consider the transparency by itself, they would be alike in all three cases.

XQ. 181. If the word "Heinz" printed on the back of the Heinz envelop and the words "Stickney Fine Cigars" printed on the back of the Stickney envelop were omitted, would you consider such envelops as exhibiting or containing the envelop described and claimed in your second patent in suit?

By Mr. TOWNSEND.—Counsel is asked what he means by the word "Heinz" or "Stickney" printed on the "back" of the respective envelops.

By Mr. BANNING.—I refer to the words printed on the [209] inside of the backs of the envelops opposite the transparent portions or windows. With this explanation please answer the question.

By Mr. TOWNSEND.—The question is objected to if it involves a legal construction of the claims, or ignores the doctrine of equivalents.

A. I do, for the reason that the envelop with the pickle-shaped border shows the name of H. J. Heinz Company printed on the face of the envelop, and this taken in connection with the pickle-shaped border constitutes an advertising device. In other words, anyone seeing this envelop and being unfamiliar with this firm could immediately recognize that the H. J. Heinz Company were in the pickle business; and the envelop with the cigar-shaped border con-

(Testimony of Max M. Cohn.)

tains permanent advertising matter printed both on the face and on the sealing flap of the envelop; this advertising matter taken in association with the cigar-shaped border constituting an advertising device.

XQ. 182. In your last answer you have referred to the words, "Return in 5 days to H. J. HEINZ COMPANY, 37-39 Washington St., San Francisco, Cal." [210] in the upper left-hand corner of the Heinz envelop, and to the words, "If not delivered in 5 days return to WM. A. STICKNEY CIGAR CO. 209 N. 4th St. Saint Louis," in the upper left-hand corner of the Stickney envelop, and to the words "Stick to Stickneys," on the outside of the sealing flap, of the Stickney envelop, have you not?

A. Yes, these are the words referred to, and as will be seen perform a double function in the Heinz envelop of being a return card and at the same time an advertisement for the firm; the words "H. J. Heinz Company" being much more prominent than the rest of the printing matter on the envelop. The ordinary return cards on stamped envelops printed by the Government, the size of the type used is uniform throughout for all the words. The same thing applies to the Stickney envelop, with the exception that it contains the legend on the sealing flap, "Stick to Stickneys." If this were printed on a plain envelop it would have no significance whatever, but when it appears on an envelop with the cigar-shaped border, it is self-evident that it means Stick to Stick-

(Testimony of Max M. Cohn.)

neys' cigars, and therefore becomes an advertising device. [211]

XQ. 184. If we took the Transo stock envelop with its plain border and printed on them every word that we find on the Heinz and Stickney envelops in the same location and with the same size of type, would you consider that such envelops exhibited or contained the envelop described and claimed in your second patent in suit?

By Mr. TOWNSEND.—Does counsel eliminate from his question everything in conjunction with the window which would be “in outline in characteristic of some symbol of trade?” If not the question is objected to as ambiguous and indefinite.

By Mr. BANNING.—My question is plain, as the stock envelops referred to in it, with their plain borders, speak for themselves, and I ask an answer to the question.

A. No. I would consider that if these envelops were printed as described with a plain border such as shown on the Transo stock envelop it would only infringe on the first patent here in suit, because there is no association of printed matter with the window constructed as a symbol of trade, namely, as the Heinz and Stickney envelops. [212]

XQ. 185. I see that the witness, Frederick E. Maynard, describes himself as a patent solicitor; with whom is he connected in business, if you know?

A. With Dewey, Strong & Co.

XQ. 186. The firm in whose offices we are now taking depositions? A. Yes.

(Testimony of Max M. Cohn.)

XQ. 187. When have you seen him last?

A. I think I bowed to him as I entered this morning.

Redirect Examination.

(By Mr. TOWNSEND.)

RDQ. 188. Without waiving any of the previous objections heretofore made to the attempted proofs offered by the defendant to show noninfringement of the first claim of the second Cohn patent in view of the previous admission on behalf of defendant in open court that said claim was infringed, I will ask you to look at claim 1 of your second patent and to take the Heinz envelop in suit and compare the two and state whether the combination of features described in that claim is present in or absent [213] from the Heinz envelop?

By Mr. BANNING.—The question is objected to as not asking for the opinion of the witness, but as to a matter of fact, which properly is to be determined by the Court, and not the witness.

A. In looking at the first claim of my second patent, I find the following:

“An advertising device comprising an envelop having a window through which the addressee’s name on an enclosure may show through.”

Referring to the Heinz envelop, I find that it is an advertising device comprising an envelop having a window through which the addressee’s name on an enclosure may show through. The claim states: “Said window being in outline characteristic of some symbol of trade.” Referring to the Heinz envelop



(Testimony of Max M. Cohn.)

we find that it has a window being in general outline characteristic of some symbol of trade, namely, that of a pickle or cucumber, which is specifically shown in the drawing of my patent, Figure 1, and is especially mentioned in the specifications as being "a cucumber [214] the trademark of a well-known manufacturer of a great many varieties of goods," and while the drawing referred to shows the name "John Doe," this name is purely fictitious, the general public knowing that the name "Heinz" was intended, and the only reason that it was not used was on account of the limitations in the Patent Office, which bar the real names of persons or firms. The claim states: "A tinted or colored border surrounding and giving definition to said window." Referring to the Heinz envelop we find a tinted or colored border surrounding and giving definition to the window.

The claim further states: "And permanent advertising matter forming no part of the address, appearing on said tinted border, and related to and in juxtaposition with the outline of said window." Referring to the Heinz envelop we find permanent advertising matter forming no part of the address appearing through the window and on the face related to and in juxtaposition with the outline of said window. [215]

In my claim and also in my specifications I do not limit myself as to the exact location of the permanent advertising matter, the main feature being the mechanical combination of the advertising matter with

(Testimony of Max M. Cohn.)

the window. I state in the beginning of my specifications, as follows:

“The object of this invention is to so design the window opening and to associate with said window such descriptive matter as will offer novel and unique possibilities for advertising.” Referring to the Heinz envelop we find that it accomplishes the desired result referred to, and is accomplished by the association of the printed matter and the pickle-shaped border. The word “Heinz” taken by itself and not associated with anything else would be meaningless; a pickle-shaped border not associated with any printing matter would have no value as an advertising device because it might mean any pickle manufacturer, but when we take the mechanical combination of these two, namely, the pickle-shaped border or window and the word “Heinz,” we have, and I will now use the language of the specification, “a striking advertisement of a particular brand of goods of a particular merchant or firm.” It is therefore self-evident that the desired object of my patent and the object of the Heinz [216] are identical and produced by exactly the same means. If the person who drew the specifications for my second patent had a Heinz envelop before him, I cannot possibly see how he could have described it more fully or completely, and it is very probable that whoever designed this Heinz envelop had a copy of my specifications before them at the time. Taking the Heinz envelop, I will paraphrase a portion of the specifications beginning at line 37, of the second page, in order to

(Testimony of Max M. Cohn.)

more clearly illustrate my meaning.

"When there is associated with a window opening of characteristic or peculiar design," as in this Heinz envelop, a window in the shape of a pickle;

"A trade name, or some word," in the Heinz envelop, the word "Heinz";

"Or words," and in the Heinz envelop the words "H. J. Heinz Company";

"Usually associated with or relating to the pictorial feature," in the Heinz envelop the pictorial feature being the pickle;

"Every one seeing the envelop is confronted with a striking advertisement of a particular brand of goods of a particular merchant or firm." [217] In the Heinz envelop we see this striking advertisement, and immediately associate it with the Heinz pickle concern. Summing up I find that every element expressed in claim 1 of my second patent appears in the Heinz envelop, and I find no elements in the Heinz envelop which are not expressed in this claim. The location of the printed matter is immaterial, and the fact that the single word "Heinz" is printed on the inside of the envelop but appearing through the window and in association with same does not in any way affect the desired result. As a matter of fact, anyone holding this envelop a few feet away could not tell if the word "Heinz" was printed on the inside or on the face of the envelop. The fact remains that it is clearly related to, "and in juxtaposition with the outline of said window."

Recess. [218]

(Testimony of Max M. Cohn.)

RDQ. 189. In how far, if at all, would the foregoing statement apply or not apply to the combination of the second claim?

A. The foregoing explanation would apply in its entirety to claim 2. I would like to add, however, that in considering the Heinz envelop with regard to claim 1 that the word "Heinz" appears (and I wish you would underline the word "appears," as I wish to emphasize this word), on the face of the envelop, and that I did not limit myself to the fact that it should be printed on the face, in claim 1; the claim simply stating that it should appear and I had in mind at the time I applied for this patent a combination of this character, as I am fully aware of the fact that Heinz' trademark usually shows a pickle with the word "Heinz" appearing within the outline of the pickle. Taking the drawing Figure 1, in my second patent and the Heinz envelop I find nothing in my claims or specifications which limits me to the location of the permanent advertising matter; the object being, as I stated before, to show the association between the permanent advertising matter and the window or border. [219]

RDQ. 190. The defendant has offered in evidence in addition to the Brown United States 1862 patent and the Busch and Boldt British patent, the patents to Tudor, Jacobson, Eneas, Reese and British patents to Johnson, Peace, Hole, Pescheux et al., Leigh, Watts, Smith et al., Cohn et al. and the U. S. Callahan patent; are you familiar with these patents and all of the patents introduced by the defendant?



(Testimony of Max M. Cohn.)

A. I am familiar with all of them.

RDQ. 191. Please state whether any of them, singly or combined, suggest or disclose the combination of your first patent.

A. None of these patents, taken singly or combined, suggest or disclose the combination of my first patent.

RDQ. 192. What would you say with regard to these patents offered by defendant in regard to the same question applied to your second patent?

A. I would make the same response.

RDQ. 193. Inviting your attention to the Brown patent 1862, Mr. Banning, in XQ. 158, page 156, asked you among various other things in the same question, "if you consider that Brown is limited to any specific *method* of manufacturing the paper [220] out of which his envelopes are to be made"; "or to any specific *means* or substances for producing the transparent spaces that he desires"; "or to any specific quality of paper to be used." Will you please state what you consider to be Brown's "method" and Brown's "means" and the character or "quality of paper" to be used.

A. In looking over the Brown patent again, I find that the only method described intelligently by Brown is that of taking a piece of envelop, of the proper size and shape and cutting same out of the envelop covering the aperture thus made with transparent paper, or other equivalent transparent covering. This is the only method that is expressed intelligently enough to allow anyone to make an en-

(Testimony of Max M. Cohn.)

velop; all other description being either too vague in its character or impossible in its execution. To exemplify, Brown states: "There may be only a transparent portion B large enough to exhibit the 'direction' through it, and this may be made either by rendering a portion of the envelop or wrapper itself transparent by the same means or substances as employed for making tracing paper." As explained before in my testimony, if Brown undertook to do what he says *might* be done in his patent, he would render the entire envelop transparent. [221] The only other method described by Brown aside from the two just mentioned is as follows:

"Instead of making only a small portion of the envelop or wrapper transparent the whole envelop, or at least the whole face of it may be made transparent."

I can see no method whatever in this last statement of Brown, as the specifications contain nothing in reference to this, aside from what I have just quoted, and it is impossible for me to imagine what method he had in his mind.

As to the means employed by Brown in his patent, the only two means he expresses are that of making paper transparent, "by the same means or substances as employed for making tracing paper or any other in the process of manufacturing the paper"; the other being the means of cutting out a portion of the envelop and covering same with transparent paper.

The only *qualities* of paper to be used, expressed by Brown, are as follows: tracing paper, transparent

(Testimony of Max M. Cohn.)

paper, and an opaque wrapper. The transparent paper is to be used in covering a hole in the opaque paper.

RDQ. 194. Mr. Regenstein said in answer to XQ. 186, page 66, D. R., when speaking of the Transo advertising envelop like Stickney and Heinz, and the reason why more firms did not use this advertising [222] feature, "the extra price is very small, but I think that the main reason why very few people can use the proposition is because *we cannot change the shape of our transparency*, and this peculiar shape can be adapted to very few articles only. Further, Mr. Regenstein says in answer to XQ. 194, p. 68, D. R., concerning Transo envelops: "our transparency is invariably about of the same size and *shape*." Do you know of your knowledge, Mr. Cohn, whether such statements of Mr. Regenstein are substantiated by the facts?

A. I know that this statement is not substantiated by actual facts, as on several occasions I have seen Transo envelops of different shapes, and I have in my possession one which I will produce. (Witness produces envelop.) This envelop shows a transparency or window of oblong shape, with square corners.

By Mr. TOWNSEND.—I offer this envelop produced by witness as Complainant's Exhibit "HH." This envelop bears the return address, Montgomery County Coal Company:

(Testimony of Max M. Cohn.)

**TAYLOR SPRINGS COAL.**

700-702 Fisher Building,

**CHICAGO.**

bearing the cancellation postmark, "Chicago, Dec. [223] 11, 4 P. M. 1909." This envelop is wider or higher than it is long, being approximately 5-3/4" wide or high and approximately 4-1/2" long. The window address space extends clear across the face of the envelop and slightly around on the back; the transparency having square corners and the green border also having square corners; the ends of the border not being visible on the face of the envelop.

RDQ. 195. You have testified to the placing on the market in 1904 some 10,000 envelops used by the Zellerbach Company and embodying your invention. Can you state the amount of time and the amount of money you expended in bringing your invention to the point of development represented by those commercial envelops which you have heretofore identified as corresponding to exhibits "L" and "M"?

A. I can. I worked continuously and persistently for over a year, beginning some time in 1903 and ending with the production of these 10,000 envelops in 1904, putting in many nights, many Sundays and several holidays. I never at any time desisted from my efforts, but kept on patiently sticking to the object I had in mind, never quitting [224] until I accomplished the object that I sought. During this period I expended some \$3,000.00, which may not appear to be a great sum to some people but meant a vast



(Testimony of Max M. Cohn.)

amount to a man of my means. This money I used for various purposes, such as the purchase of different chemicals and oils used in making my preparation; also for ink and paper of numerous nature and consistency. Part of this money was also used in paying for labor which was generally at a high rate on account of the work being done on what is termed as "overtime." I also paid to chemists various amounts for work done at my request. I frequently found that after spending much time and money on a certain preparation that the same was useless for my purpose and it was necessary for me to start over again. During this period I did a little work on the envelop described in my abandoned application dated May 9, 1904, but the expenditure of time and money on this particular feature was very trivial.

**Recross-examination.**

(By Mr. BANNING.)

RXQ. 196. This Montgomery County Coal Company envelop produced by you this afternoon, and offered as exhibit "HH," does not have the words, "Pat. Aug. 9, 1904, Transo Paper Co., Chicago," does it? [225]

A. No. I recognize it as a Transo envelop, because it has the word "Transo" printed on the inside of the sealing flap.

RXQ. 197. This envelop has on it the words, "Breveté 4 Avril 1905," printed on it, does it not?

A. Yes, and to my mind it shows a French patent date of April 4, 1905.

(Testimony of Max M. Cohn.)

RXQ. 198. In answering XQ. 232, Mr. Regenstein stated that patents were "received in England, France and Canada on the Reese patent," did he not?

A. He did, but I think he stated that he only manufactured this character of envelops in the United States.

RXQ. 199. In answering XQ. 244, Mr. Regenstein stated that he manufactured "here in the United States these envelops for use in any of those foreign countries," did he not?

A. He did, and in answering XQ. 243 he stated, "we have never manufactured in any country but the United States." The envelop produced by me exhibit "HH," and which called up this discussion was according to Mr. Regenstein's testimony manufactured in the United States and judging from the printed matter on the same [226] already quoted in one of your questions, and the postoffice cancellation stamp, Chicago, Illinois, it was used in the United States.

RXQ. 200. Judging from the size and shape of the envelop, and from the words, "Breveté 4 Avril 1905," printed on it, taken in connection with Mr. Regenstein's statement that he manufactured in the United States envelops under these foreign patents, would you not think that this particular envelop, exhibit "HH," was like some that he may have manufactured for use in France?

A. I do not know what kind of envelops, if any, Mr. Regenstein manufactured to be used in France. I do know, however, that I have seen large quantities

(Testimony of Max M. Cohn.)

of Transo envelopes exactly in the same shape as this one, used by the Charles Hadley Company of Los Angeles, California. This company, I believe, has the agency for the Transo envelop for Southern California.

RXQ. 201. The transparent window or portion on this exhibit "HH" is substantially of the same width and length as the transparency or window in the Transo stock envelop, and differs principally from them in the fact that the transparency producing preparation was applied by a rectangular block [227] instead of one rounded at the ends; is not this substantially correct?

A. It is substantially the same as to size with the differences you have mentioned.

RXQ. 202. And the green border on this envelop exhibit "HH" is substantially like the green border on the Transo stock envelop, except that instead of being rounded on the ends it is provided with square corners making it rectangular in shape; is not this substantially correct?

A. It is substantially correct.

RXQ. 203. Is it not true, as stated by Mr. Regenstein, that "we cannot change the shape of our transparency," and that the transparency shape "can be adapted to very few articles only," if we bear in mind that the transparency must in all cases be of a proper and appropriate size and shape to permit the address on the enclosure to be properly exposed or displayed?

A. No. The very shape of the oblong transparency with square corners, shown in exhibit "HH,"

(Testimony of Max M. Cohn.)

suggests to my mind several features by which it could be used to good advantage as an advertising device, and in my previous testimony [228] I mentioned that I had a great number of sketches made, and I recollect that some of these sketches embodied an oblong-shaped window with square corners.

RXQ. 204. I suppose we are easily within conservative limits when we say that probably there are a million different articles of manufacture that are made and sold in this country. If this be so, would you think that Mr. Regenstein is out of the way when he said in answer to XQ. 186 that the shape of the window "can be adapted to very few articles only"?

By Mr. TOWNSEND.—The question is objected to as immaterial, and even assuming the truth of the supposition, it is no defense or excuse for the defendant's infringement or use of a pickle with associated advertising matter. Furthermore, the question and statement has reference to articles of manufacture, while we would call the attention of the counsel to the fact that the patent has reference to *trademarks and trade symbols*. [229]

A. In my former testimony shows that I had several hundred sketches of different kinds prepared which allowed for a suitable size of transparency (suitable for addressing space) in association with various articles, trademarks, symbols of trade, etc. In answer to XQ. 186, Mr. Regenstein stated that he could not change the shape of his transparency. The envelop that I produced shows that he was able to



(Testimony of Samuel E. Selling.)

change the shape, and while the change may only be a slight one, it does not take very much of a change in the shape of the addressing space to give an artist an opportunity for innumerable conceptions in this connection.

MAX M. COHN. [230]

[**Testimony of Samuel E. Selling, for Complainant.**]

Mr. SAMUEL E. SELLING, called on behalf of the complainant, and after being duly sworn, doth depose as follows:

(By Mr. TOWNSEND.)

Q. 1. Please state your full name, age, residence and occupation.

A. Samuel Ely Selling; age, 41; salesman, Illinois-Pacific Glass Co., 2852 Sacramento St.

Q. 2. How long have you been with the Illinois-Pacific Glass Co.?

A. Twenty-three and a half years.

Q. 3. Are you acquainted with Max M. Cohn, the complainant in this case? A. Yes.

Q. 4. How long have you known Mr. Cohn?

A. Close on to 19 or 20 years.

Q. 5. Was Mr. Cohn ever employed by the Illinois-Pacific Glass Company, and if so do you know when he left their employ. [231]

A. Yes, he was employed by the Illinois-Pacific Glass Co., and left in 1903.

Q. 6. Do you know where he went?

A. To A. Zellerbach & Sons.

Q. 7. Has Mr. Cohn at any time ever claimed to you to be the inventor of an envelop of any descrip-

(Testimony of Samuel E. Selling.)

tion? A. Yes, he did.

Q. 8. Will you please state when and where he first brought such matter to your attention, and if he disclosed the nature of that invention to you what was the nature of that disclosure?

A. He showed me the idea at our store on Main Street, and described to me the idea of its benefits, in taking the place of the envelop with a piece of paper pasted therein. He had made several hand samples showing where this would be far better and where it was impossible to be tampered with on account of its being an entire envelop instead of its being a two-piece envelop, as was the old one. This was shortly before he left our employ, and the envelop was made with an oily substance that he had used in the center to give it the transparent effect. If I remember correctly, also, some had [232] a border around them and also some had designs such as a pickle, and I do not remember what other designs were printed on the envelops.

Q. 9. Do you think that if you saw an envelop constructed according to the disclosure made in 1903 by Mr. Cohn that you would recognize such an envelop?

A. I do.

Q. 10. I will show you several envelops which have been introduced here in evidence, displaying them with their faces downward and ask if you can pick out from those an envelop which would correspond to anything you saw or understood from Mr. Cohn's description at that time to be his invention. (COURT

(Testimony of Samuel E. Selling.)

sel lays before witness, face down, exhibits "L," "M," "O," "R.")

(Witness turns over the envelops laid before him and examines their faces, before answering.)

A. This one here marked exhibit "R" was shown me by Mr. Cohn and I recall even the printing thereon, at that time; this being the only one I recognize as having been shown me by Mr. Cohn when he was in our employ. The envelop exhibit "L" was subsequently shown me by Mr. Cohn, some little time after he went into the employ of Zellerbach & Sons. [233] The other two I do not recall ever having seen them.

Cross-examination.

(By Mr. BANNING.)

XQ. 11. Do you mean that this envelop marked exhibit "R," or one like it, was the one shown you by Mr. Cohn while he was in the employ of the glass company? A. One very similar to that.

XQ. 12. What do you mean in your answer by "some little time" after Mr. Cohn entered the employ of Zellerbach & Sons?

A. Within two to three months, possibly less.

XQ. 13. It might also have been more, might it not?

A. No, sir; for the reason I know that I was very much interested in this patent and spoke to him continually on the subject, being very intimate friends I naturally was very much interested in his proposition.

XQ. 14. Do you have any letters, writing or other memorandums that enables you to fix the date when

(Testimony of Samuel E. Selling.)

Mr. Cohn showed you this exhibit "L" envelop?  
[234]

A. No, sir. However, I can recall where he mailed me one of those envelops with the pickle designed thereon, and had written a note therein asking me how I liked it.

XQ. 15. Have you that envelop or note that you have just mentioned as mailed to you by Mr. Cohn?

A. No.

XQ. 16. Have you any means of fixing the date when he mailed that pickle envelop to you?

A. No, sir, not more than it was shortly after he went into the employ of Zellerbach.

XQ. 17. You speak of several hand samples that Mr. Cohn showed you. Were they like this envelop exhibit "R"?

A. Not in colors like that as I recall it.

XQ. 18. Were they like it in other respects?

A. I should say yes.

XQ. 19. After Mr. Cohn entered the employ of Zellerbach & Sons was he often over to the office of the glass company?

A. Not that I could particularly mention or recall so far as I am particularly concerned, although I had seen him quite a few times. [235]

XQ. 20. What were your duties as salesman for the glass company while Mr. Cohn was there?

A. Inside salesman—store salesman and manager of the Operating Department.



(Testimony of Samuel E. Selling.)

Redirect Examination.

(By Mr. TOWNSEND.)

RDQ. 21. Mr. Selling, will you please examine the envelop exhibit "R" and state if you can how the transparent window space is made.

A. As I remember, the hand-made envelops that Mr. Cohn showed me were made with an oily substance which he had been using. As I recall it, the sample exhibit "R" was made on similar lines of the ones he showed me at that time.

(Question re-read.)

A. I cannot describe to you how exhibit "R" was made.

RDQ. 22. Are you familiar with paper generally and the treatment of same? A. No. [236]

RDQ. 23. If it were shown that the transparency of this exhibit "R" was not made by use of an oily substance, or treatment of the paper by oil or the like to render it transparent, would you still be of the opinion that this exhibit "R" was like those hand-made specimens that Mr. Cohn showed you?

A. I should say very similar.

RDQ. 24. I understand, though, that you are not able to tell how the transparency is made in exhibit "R" by simply looking at it. A. No. I am not.

RDQ. 25. Are you satisfied in your mind that Mr. Cohn did in fact before he left the Illinois-Pacific Glass Company describe and show to you his idea of an envelop using oil for making the transparent window and the use of a border?

By Mr. BANNING.—Question objected to as lead-

(Testimony of Samuel E. Selling.)

ing and suggestive.

A. I am thoroughly and positively satisfied that such was the case. [237]

Recross-examination.

(By Mr. BANNING.)

RXQ. 26. Did the envelops which you say Mr. Cohn showed you before he left the employ of the glass company all have rectangular or square-cornered windows, and blue borders around the window?

A. I don't remember whether all of them had it.

RXQ. 27. After Mr. Cohn left the employ of the glass company did he ever show you any of his one-piece window envelops? A. Yes, sir.

RXQ. 28. Did he show you any such envelops during the year 1904?

A. The early part of 1904, I should say.

RXQ. 29. And were they similar in appearance to this envelop exhibit "R"?

A. What do you mean by the entire effect of it?

RXQ. 30. I think my question is plain. What I mean is, did the envelop which Mr. Cohn showed you in 1904 look like this envelop exhibit "R"?

A. I don't recall whether *it the* same. [238]

RXQ. 31. Did the envelops that he showed you in 1904 have rectangular windows and blue colored borders similar to this envelop exhibit "R"?

A. I don't recall that either.

RXQ. 32. When did you first see or Mr. Cohn show you the envelops with the windows or transpar-

(Testimony of Samuel E. Selling.)

ent portion in the shape of a pickle or cucumber or cigar?

A. Shortly after leaving the employ of the Illinois-Pacific Glass Company.

RXQ. 33. Did he show you such envelops during the year 1904? A. Early part of 1904.

S. E. SELLING. [239]

[Testimony of B. T. Bean, for Complainant.]

Mr. B. T. BEAN, being called on behalf of the complainant and first duly sworn, doth depose as follows: (By Mr. TOWNSEND.)

Q 1. Will you please state your full name, age, residence and occupation?

A. My full name is Barton T. Bean; 37; San Francisco; 2656 Larkin Street; Efficiency Engineer.

Q. 2. How long have you been following that profession, Mr. Bean? A. About 15 years.

Q. 3. What is the general nature of your work?

A. My work is to go into manufacturing and other businesses and work out plans of organization systems for doing the work to promote efficiency and simplify matters.

Q. 4. Are you acquainted with Mr. Max M. Cohn, the complainant in this case? A. I am.

Q. 5. How long have you known Mr. Cohn? [240]

A. About 8 years.

Q. 6. Do you recall the circumstances of the beginning of your acquaintance with Mr. Cohn?

A. I do.

Q. 7. Generally, what were they?

(Testimony of B. T. Bean.)

A. I came out to the Coast to make a report and physical examination for the firm of Dunham, Carrigan & Hayden, San Francisco. At that time I was in the employ of the Baker-Vawter Co. of Chicago and the work was done in their behalf. During the time I was working on that firm the Baker-Vawter man here, Mr. Duggit, spoke to me about Mr. Max Cohn, whom he knew, and said that I ought to meet him, as he was quite an ingenious sort of a fellow and had gotten up several unique plans of filing, and that possibly we could get a system contract out of the firm he was employed by. He took me down to the Illinois-Pacific Glass Company where Mr. Cohn was employed and introduced me to him. I talked with Mr. Cohn about my work and he introduced me to other officers of the Illinois-Pacific Glass Company and I spent a day or so going around through the office and factory and studying the conditions with a view of getting a contract. [241] While I was at the Illinois-Pacific Glass Company I went over the plans of their bookkeeping system and general office work with Mr. Cohn and that was the way in which I made his acquaintance.

Q. 8. During the time you have known Mr. Cohn, has he ever claimed to you that he was the inventor of any particular style of an envelop or that he had any patents on the same?

A. At that time Mr. Cohn said that he wanted to show me something in confidence and as I was traveling all over the United States and knew more or less about business conditions and business practices, and



(Testimony of B. T. Bean.)

that he had a new style envelop that he wanted to get my opinion on, and that he would show it to me in confidence, but did not want me to tell anyone about it. He then showed me some rather rough styles of envelops that were translucent or transparent, so that the address would show through the envelop, the writing being hidden by the rest of the paper which was opaque. It was after the style of an Outlook envelop, except that the opening was prepared by some process making it transparent. I remember that I told him that I had never seen anything like it before and that I [242] thought it was a splendid thing, and I further thought that in my judgment there would be a good sale for that sort of an envelop.

Q. 9. Can you describe with any more particularity the construction and appearance of the envelop Mr. Cohn showed you, and if you can, please do so?

A. As I remember, the samples he showed me they were of rather rough construction and looked as if they had been made up by hand. Some of the samples were flat, just blanks, treated with this preparation. The transparent part was surrounded by a sort of a border of cloud effect. I don't remember much about the samples in detail.

Q. 10. Did Mr. Cohn explain the purpose of the border or cloud effect?

A. In talking about the matter I told him that I was surprised somebody had not thought about it before and I figured it was merely some sort of oil that was put on the paper to make it transparent, and he said that it was an oily preparation and that that was

(Testimony of B. T. Bean.)

one of the secrets and that the border was to keep this oil from spreading.

Q. 11. Do you believe that you could recognize such an envelop as you saw then, if you should see [243] it now?

A. I could recognize the type. I would not want to try and identify any of the envelopes or papers I saw at that time.

Q. 12. I will lay out before you 4 specimen envelopes, face down, and which are Complainant's Exhibits "L," "N," "O," "R," and ask you if any one of those envelopes are like the envelopes that you saw in 1903?

(Witness taking the envelopes and examining their face, says:)

A. These are much better envelopes than the ones I was shown. The ones I saw were just roughly cut envelopes. I don't have a very clear recollection of any of the papers I saw at that time, but these two, "N" and "O," are more like the ones than the other two. As I remember it, the envelopes he showed me were drawings, something after this fashion. Referring to "N" and "O." The envelopes themselves are not as clear in my memory as the plan and the talk that we had about the subject. I wasn't so much interested as to the envelop as I was in the idea.

Q. 13. You have stated that this disclosure occurred in the latter part of 1903. Have you any way of fixing that date? [244]

A. My method of fixing that date is by the time I performed the service for Dunham, Carrigan & Hay-

(Testimony of B. T. Bean.)

den at that time. In talking this matter over with Mr. Cohn recently, I was somewhat vague in my own mind as to the exact date, so I wrote to the Baker-Vawter Company and asked them to advise me what date the service was performed for Dunham, Carrigan & Hayden. I received their reply which stated that that service was billed as of October 31, 1903.

Q. 14. Have you the letter from the Baker-Vawter Company referred to?

A. I have. (Witness produces letter.)

By Mr. TOWNSEND.—I ask that the letter produced by witness be read into the record, the letter being as follows:

“Public Accountants and Auditors.

Devisers of Business Systems.

BAKER-VAWTER COMPANY,

Loose Leaf Accounting Forms and Binding Devices.

Chicago, Ill., Feb. 6, 1911.

Mr. B. T. Bean,

c/o Klink, Bean & Co.,

San Francisco, Cal.

Dear Mr. Bean:

Our records show that the contract for Dunham, Carrigan & Hayden was dated August 14th, 1903, [245] and that the date of our invoice to them, which was for fourteen days service was Oct. 31st.

We trust that with this information you will be able to claim the hat.

With kindest regards from the writer,

Yours very truly,

FB. 35.

FOSTER BRANSON.”

(Testimony of B. T. Bean.)

Q. 15. In the above letter, what is meant when it says, "that the date of our invoice to them, which was for fourteen days service was Oct. 31st"?

A. That is the date of the invoice or bill that was rendered by Baker-Vawter Company to Dunham, Carrigan & Hayden for the service I performed here.

Q. 16. Over what period did the fourteen days service extend?

A. I think it extended over the period of September and October, although I wouldn't be positive as to those dates.

Q. 17. Would the fourteen days mentioned necessarily be for fourteen days immediately preceding October 31st, 1903, or did those fourteen days extend over more period than that?

A. They extended over more period than that. The days were not consecutive. [246]

Cross-examination.

(By Mr. BANNING.)

XQ. 18. What is the reference in this letter to the "hat"?

A. I think that I asked the Baker-Vawter Company to decide a bet on a hat as to the time I first came to California.

XQ. 19. Did you have a bet as to a hat with anyone? A. No, sir.

XQ. 20. Did you see Mr. Cohn after he left the employ of the glass company and during the year 1904? A. I think I did.

XQ. 21. Do you know when he left the employ of the glass company? A. I do not.



(Testimony of B. T. Bean.)

XQ. 22. Did Mr. Cohn show you any of his envelops during the year 1904?

A. I don't remember the exact times at which he showed me these envelops during the years 1904, 1905 and 1906, but possibly two or three times during those years he spoke to me about the envelops and showed me some I remember with advertising matter around the border. [247]

XQ. 23. When did Mr. Cohn show you an envelop like this one marked, exhibit "R"?

A. I don't remember. I would not try to identify those envelops.

XQ. 24. Did he show you one similar to this one exhibit "R" on the occasion of your first meeting him when you say he showed you some rough envelops or blanks?

A. I would not try to identify any envelop or paper he showed me at that time. The conversation and talk in regard to it is more clear in my mind than the actual papers looked at.

XQ. 25. You have referred to these few exhibit envelops "N" and "O" as being somewhat of the nature of the rough envelop or blank that you say Mr. Cohn showed you. Can you identify them as representing an envelop that he showed you on the occasion of your first meeting him?

A. As I remember, the envelops and paper showed me they were after that style.

XQ. 26. Can you say as to whether or not they had any clouds in blue or silver around the transparent portion? A. I could not. [248]

(Testimony of B. T. Bean.)

XQ. 27. Can you say positively that they had any border whatever around the transparent portion?

A. My memory is very vague as to the actual envelopes and papers submitted. I did not pay very much attention to the samples after the idea was given me.

XQ. 28. Are you willing to state positively that the envelopes and blanks which Mr. Cohn showed you, as you say in 1903, had any border whatever around the transparent portion?

A. As I remember them, they did.

XQ. 29. Will you be positive as to whether they had or had not?

By Mr. TOWNSEND.—The witness has already answered the question repeatedly, by saying that according to the best of his recollection they did have that feature and the question is therefore objected to as mere repetition.

A. I can only answer according to the best of my recollection.

XQ. 30. Then, you cannot state positively whether the envelopes or blanks that Mr. Cohn showed you in 1903 as you have explained, had borders or not around the transparent portion, can you? [249]

A. Only from the conversation that I remember about the oil to be put on the paper being kept from spreading in some way.

XQ. 31. I am not asking you now about the conversation. What I want to know is, whether you are willing to state positively that the envelopes and blanks which you say Mr. Cohn showed you had

(Testimony of B. T. Bean.)

borders around the transparent portion.

A. I am only willing to state that in so far as I recollect they did have. My recollection is vague as to the details of the samples.

XQ. 32. The envelops which Mr. Cohn showed you during the years 1904, 1905 and 1906, had borders of some sort printed around the transparent windows, did they not?

A. I don't remember any more distinctly about those envelops except those which embodied advertising features than I do about the others.

XQ. 33. Do you remember the color of the borders around the envelops which had the advertising features that you have mentioned?

A. I remember seeing pickles, or cigars, but I don't remember color, or anything like that. [250]

XQ. 34. Why did Mr. Cohn ask you to keep the matter secret when he showed you the first envelop or blank that you remember of seeing?

A. Why I presume it was on account of the patent matters.

XQ. 35. I suppose he was desirous of keeping that secret until he had gotten his patent; is that what you understood? A. That was my impression.

XQ. 36. How did the paper of the blanks and envelops which Mr. Cohn showed you correspond with the paper out of which this envelop R was made?

A. I don't remember.

XQ. 37. Without this letter from the Baker-Vawter Co., dated February 6, 1911, would you be able to say within six months or possibly a year, as to

(Testimony of B. T. Bean.)

when it was that Mr. Cohn showed you those rough envelopes and blanks?     A. Yes, sir.

XQ. 38. Now that you have refreshed your memory by this letter you fix the date as in October, or in the fall of 1903, do you?     A. Yes, sir. [251]

XQ. 39. If you had not written to the Baker-Vawter Co. and got this letter, would you have any memorandum or writing or anything that would enable you to fix the approximate time of your talk with Mr. Cohn?     A. Yes, sir.

XQ. 40. Why did you write to the Baker-Vawter Company for this letter?

A. Because it was the easiest way to get the information.

XQ. 41. When did you last talk with Mr. Cohn about the subject matter of these envelopes?

A. Last night.

XQ. 42. Had you ever talked with him before that?     A. Yes, sir.

XQ. 43. During the last few months?

A. Once or twice.

#### Redirect Examination.

(By Mr. TOWNSEND.)

RDQ. 44. After completing your job with the Dunham, Carrigan & Hayden Co. in 1903, did you remain on the Coast or did you return to Chicago?

A. I returned to Chicago. [252]

RDQ. 45. When did you next come out to California?

A. Some time the early part of the next year, 1904.



(Testimony of B. T. Bean.)

RDQ. 46. When did you locate permanently in California?

A. Some time in 1904. I think July 1st my resignation was accepted by the Baker-Vawter Company, as I desired to remain out in California.

RDQ. 47. Did Mr. Cohn mention to you at any time in 1903 while you were engaged on the Dunham, Carrigan work that he contemplated leaving the glass company?

A. I believe that was one of the reasons why he urged the company to employ my services, as he was going away shortly; in fact, I believe he told me that he was going to leave and take a position with the Zellerbach Paper Company.

RDQ. 48. Are you positive in your mind of the disclosure by Mr. Cohn to you in September or October of 1903 of an envelop with a window space formed by oil and the use of a border for the purpose as you have expressed it, of keeping the oil from spreading and of his showing you specimens illustrating his idea? [253]

By Mr. BANNING.—Question objected to as leading.

A. I am positive that the conversation I have testified to took place the first time I came to California.

RDQ. 49. And to the best of your recollection the conversation was illustrated as you before testified.

A. It was.

BARTON T. BEAN. [254]

March 1st, 1911.

RQD. 50. Mr. Bean, referring to the letter of the

(Testimony of B. T. Bean.)

Baker-Vawter Company, February 6, 1911, introduced above, and in which reference is made to the "hat," have you this morning a copy of the letter written Baker-Vawter Company, and to which their letter of Feb. 6, 1911, was a reply?

A. Yes, sir. (Witness produces.)

By Mr. TOWNSEND.—I ask that the letter offered by witness be read into the evidence and be considered in connection with the Baker-Vawter letter, previously referred to, as follows:

"San Francisco, Cal., January 31st, 1911.

Mr. Foster Branson,  
c/o Baker Vawter Co.,  
Chicago, Illinois.

Dear Mr. Branson:

A friend and I were disputing the other day as to the year I came to California to do the Dunham, Carrigan & Hayden work. I am under the impression that it was in 1903.

If it is not too much trouble I wish you would look up the year and month I was out here on that trip as I would consider it a personal favor.

Thanking you in advance and with kind regards,  
I am, Yours very truly," [255]

RDQ. 51. Referring to the disclosure of this invention by Mr. Cohn in 1903, would you have been able to make an envelop embodying the invention?

A. Well, if I had known the formula that was used to make the paper transparent I could have applied the idea.

BARTON T. BEAN. [256]

(Testimony of A. Vanderzwiep.)

March 1st, 1911, 10 A. M.

Parties met pursuant to adjournment. Present as before.

**[Testimony of A. Vanderzwiep, for Complainant.]**

Mr. A. VANDERZWIEP, being called on behalf of the complainant and being first duly sworn, doth depose as follows:

(By Mr. TOWNSEND.)

Q. 1. Will you please state your full name, age, residence and occupation?

A. A. Vanderzwiep; age, 27 years; 3626 20th Street, San Francisco; bookkeeper for Zellerbach Paper Company.

Q. 2. How long have you been with the Zellerbach Company?

A. I have been there since April 15, 1903.

Q. 3. Do you know Mr. Max M. Cohn, the complainant in this case? A. Yes, sir.

Q. 4. How long have you known Mr. Cohn?

A. Since he first came to A. Zellerbach & Sons, predecessors to the Zellerbach Paper Company. [257]

Q. 5. Do you know when that was?

A. In the neighborhood of about six months after I came.

Q. 6. Do you know about the patented envelop of Mr. Cohn, which forms the subject matter of this controversy? A. Yes, sir.

Q. 7. Have you any knowledge concerning the use at any time by the Zellerbach Company of any of Mr. Cohn's envelops? A. Yes, sir.

(Testimony of A. Vanderzwiep.)

Q. 8. Will you state generally what that knowledge is?

A. In the latter part of 1904, by the location of my office, I remember that these envelops were introduced to me to be used on bills and statements, and having charge of mailing all bills and statements at that time I am positive that in the neighborhood of about 10,000 were used prior to January 1st, 1905, at which time my office was moved to another portion of the store in A. Zellerbach & Sons. The envelop shown to me to which I refer was of about a regular correspondence size of a blue dotted [258] appearance on the outside and a light manila color on the inside with A. Zellerbach & Sons' card in the upper left-hand corner of the face. A portion of the face in the center thereof was transparent and was surrounded by a fancy oblong border. That is the envelop right there (pointing to exhibit "L"). The reason that I am positive that in the neighborhood of 10,000 of these envelops were circulated is that more than two lots of statements were sent out contained in these envelops, and the issue of each lot was in the neighborhood of from 2,000 to 2,500; furthermore, we had at that time letter-heads printed so that they could be contained in this particular envelop, and were mailed generally all over the United States; being used by the wrapping paper department. These envelops were also used for mailing bills, of which on an average of about 300 to 450 a day were made out. I remember the supply of these envelops soon gave out



(Testimony of A. Vanderzwiep.)

and inquired for more at the time, but as same did not show up I had to resort to another style the "Outlook" envelop, which had the transparent paper pasted in back of the opening in the face. Another incident which makes me remember that it was in my office at the rear part of the store, is by the way it was introduced to me [259] by the manager of the wrapping paper department at that time, as he seemed to be very much enthused over it, and said that I should use these in the future in sending out all bills and statements.

Q. 9. Were these Cohn envelops which you used at that time, satisfactory?

A. They satisfied me, and I heard no complaints.

Q. 10. Do you recall the form of these statements which your firm used at that time and which were enclosed in these Cohn envelops?

A. At the same time when these envelops came in Mr. Cohn showed me a statement which could be folded in a way so that the same could be inserted in the envelop in a manner by which the address could be seen through the transparent part of the face of the envelop.

Q. 11. Look at the enclosure in the Cohn envelop, exhibit "L" and see if that is like in form with the statements showed you or the statements you were using?

A. No, sir; not as to the printing matter, [260] but a statement of similar size that could be folded to obtain the same results.

Q. 12. My question did not relate to the printing

(Testimony of A. Vanderzwiep.)

matter, because this appears to be printed in the name of the Simplex System Co., and I would presume that you would not be sending out statements with their imprint. I merely had reference to the general form and method of folding, and does your answer to the previous question as to folding and results correspond to this Simplex statement?

A. Being the same style of statement it would naturally have to be folded the same and be the same, otherwise it would not fit the envelop, and let the address come in the same place, so as to be seen from the outside.

Cross-examination.

(By Mr. BANNING.)

XQ. 13. What was the reason that no more of these Cohn envelops were ordered or used after the 10,000 lot was exhausted?

A. I was never told the reason.

A. VANDERZWIEP. [261]

**[Testimony of John C. Tooker, for Complainant.]**

Mr. JOHN C. TOOKER, being called on behalf of the complainant, and being first duly sworn, doth depose as follows:

(By Mr. TOWNSEND.)

Q. 1. Will you please state your full name, age residence and occupation?

A. John C. Tooker; age, 36; residence, 224 Shotwell Street, San Francisco; occupation, printing pressman and foreman of the press-room of F. H. Abbott, #545 Mission Street, San Francisco, California.

(Testimony of John C. Tooker.)

Q. 2. How long have you been with the Abbott Printing-house?     A. Over 12 years.

Q. 3. Are you acquainted with Mr. Max M. Cohn, the complainant in this case?     A. I am.

Q. 4. How long have you known Mr. Cohn?

A. Nearly 8 years.

Q. 5. What were the circumstances of your first meeting Mr. Cohn? [262]

A. I was then foreman in the employ of Mr. Abbott at 316 Battery Street, San Francisco, and Mr. Cohn came into the office to have some work done. As foreman I handled that work. The work was an envelop that he was trying to perfect. He explained to me as best he could what he wanted me to do, and I agreed to take this matter up and handle it for him. He came into the office and had me work on this matter for him for some time, I should say nearly a year. The work was done on "overtime," as we call it, that was, my time. It was a matter that I took up myself. I was paid for doing the work.

Q. 6. What was the general nature of that envelop, and in making your explanations you may continue your statement as to what you did in connection with it, giving such dates and events as operate to fix these matters in your mind?

A. The envelop was envelop to be used in mailing matters. The feature of it was that it would be an opaque envelop with a transparent space through which it would be possible to see the writing of a portion of the matter enclosed therein. It was

(Testimony of John C. Tooker.)

printed from a zinc block with a hole to allow for the preparation which would be applied that [263] would make the paper transparent in the vacant space in the zinc. The metal was so etched out that it left a border which would cover around the place where this application for transparency was to be applied. We experimented in this matter for nearly a year. I was working on this process around the holidays. My reason for knowing that it was at that time is that some of the money paid to me for my labor I used in buying presents. The time put in between then and the time that I printed 10,000 of these envelops finished, was nights, Sundays and holidays. The exact number I could not state, for all of which time I was paid by Mr. Cohn. The method under which we worked was varied. We tried many different ways to accomplish the result that he had in mind. The preparations for transparency he supplied and were many. It was no easy task to get the desired result. First, we had trouble in getting the desired inks and the preparations; I mixing some of the inks and Mr. Cohn supplying me with some that he got outside. All of the mixture for transparency was supplied by Mr. Cohn. There was quite a bit of trouble in getting the printing press to handle these different preparations, which required a good deal of time and thought. We had a great many difficulties to overcome, the main one being to get the desired transparency [264] which he finally succeeded in getting. In getting this preparation we met with



(Testimony of John C. Tooker.)

an obstacle which caused us a good deal of hard labor. That was to keep the preparation from spreading all over the sheet, or running, as the printer terms it. We put on the preparation on the paper first from a wood block, then we used rubber and different kinds of strawboard and cardboard; also pulp wood, but they seemed to carry too much of the preparation which spread out on the outside of the printing space, giving it a tendency to flow further over the sheet. We finally tried felt, which seemed to work more satisfactorily with a little help in "make-ready." There was a tendency to spread from this preparation, which would have to be overcome by what printing pressmen call "make-ready," which I managed to overcome by cutting a piece of pulp board and gluing to the cylinder to press the sheet tightly on the felt, which would make the preparation sink into the paper and still permit you to carry less of the preparation, thereby having that much less pushed on the outside of the felt, so that it would not spread. This piece of pulp board was cut smaller than the felt, which made the impression on the paper a little away from the border, thereby allowing a little spread so that the preparation would not flow beyond the border, and thereby make the paper transparent further than [265] Mr. Cohn had figured in working out this proposition; his idea being, as I understood, to have the envelop entirely opaque, with the exception of the transparent space in between the border. We finally got to the place

(Testimony of John C. Tooker.)

where we could turn out these envelops with the preparation covering the desired space and not spreading too far. He then gave an order for 10,000 of these envelops to be printed, which I printed about September, 1904. I base the date of the time of printing on the fact that I took my vacation at that time, and some of the money which he paid me for my services went toward paying for my vacation. I do not remember of having done anything for him after that time. The envelops were printed and delivered to him and as far as I know all used up.

Q. 7. How do you fix this vacation period referred to?

A. To me that is a very easy matter. I had not up to this time in September, 1904, had a vacation for five years. I had worked steadily and continuously for the same house. As foreman of the press-room I had a great many things to try my nerves. At that time I was very nervous. I stated to Mr. Abbott that it was absolutely necessary for me to take a vacation, and he agreed that it was. [266] I had figured on going on this vacation about the last of June, but the foreman of the composing-room had also planned on a vacation and at the time I spoke I was a little late, he having asked for the same time, so I finally decided that I could hold out until September, when I had a three weeks' vacation. That I am more sure as to the date, I had no other vacation after that until the fire of April, 1906, which gave all the residents of San Francisco

(Testimony of John C. Tooker.)

a vacation that they didn't look for. Labor Day, which is always a vacation day for a Union man, came during that time, and I was expected to parade with my Union. My not being in the city that day gave me the privilege of not parading, or saved me \$10.00. September the 9th, Admission Day, also came about that time, so I also saved two days' pay that I would have lost if I had not so planned to take this vacation. I say "saved," because had I taken my vacation in July I should have lost the \$12.00 that I would have been paid for those two days.

Q. 8. Would you recognize any of the work done or envelopes made at that time for Mr. Cohn if you saw one now?     A. I would.

Q. 9. I show you Complainant's Exhibit "L" envelop, and ask you if you can identify that envelop in any way? [267]

A. Yes. (After examining the same.) There was a mark showing apparently a scratch on the zinc plate leading from the border out, which I figured at the time was possibly done in washing off the zinc with a rag that had a pin or a button on it. I thought at the time that Mr. Cohn would think I was very careless, but I learned afterward that it was the fault of the man who made the cut. I have had this happen by a careless boy, which compelled me to pay for a cut that was thereby ruined.

(By Mr. TOWNSEND.)

Q. 10. This defect in the block which you refer to is indicated by the white line at the left end of the envelope, exhibit "L" and has been marked

(Testimony of John C. Tooker.)

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(Testimony of John C. Tooker.)

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(By Mr. TOWNSEND.)

Q. 10. This defect in the block which you refer to is indicated by the white line at the left end of the envelope, exhibit "L" and has been marked

(Testimony of John C. Tooker.)

with the letter "x," this letter being applied now in your presence; is that correct?     A. That is.

Q. 11. Does that same defect appear in envelop exhibit "P"?     A. It does.

Q. 12. And also on exhibit "M"?

A. Yes, sir. It appeared on all the envelops of that 10,000 lot. [268]

Q. 13. Do I understand that this work for Mr. Cohn was completed and all these envelops made similar to exhibit "L," before you went on your vacation in 1904?

A. They were all delivered to Mr. Cohn before I took my vacation.

Q. 14. Were the envelops folded when delivered, or were they delivered flat?

A. No. They were delivered by me flat. Mr. Cohn subsequently had them folded.

Q. 15. You have said that you worked from the holidays until September, 1904, for Mr. Cohn. What holidays do you mean, and when do you fix that period at?

A. I mean the holidays called "Christmas" and "New Year" of 1903 and January 1st, 1904, and also Decoration Day, 1904 (May 30th). The Sundays and nights, as I said before, I could not give the dates, but from the Christmas holidays up to September, 1904, I put in a great deal of time. [269]

Q. 16. About what is the earliest date that you began working on this envelop of opaque stock with an oily preparation for Mr. Cohn?

A. The exact date I could not tell. It was before

(Testimony of John C. Tooker.)

the Christmas holidays of 1903.

Q. 17. I understood you to say that you worked about a year on the idea.

A. Altogether about a year.

Q. 18. Was there ever any time during that period where the matter was abandoned or given up?

A. No.

Q. 19. You simply kept at it till you solved the difficulty; is that correct?

A. Off and on from the time we commenced until we printed the 10,000 envelops we worked trying to perfect what Mr. Cohn had in mind—the transparent envelop.

Q. 20. Did you try different borders?

A. We had several different zincos to print from for the coloring of the sheet of paper.

Q. 21. What do you mean by the coloring?

A. I mean for printing the colored ink on the sheet of stock, not the preparation used to make it [270] transparent.

Q. 22. What were the general shapes that you used in the way of borders or windows?

A. One was shaped similar to a pickle. One was shaped, cigar-shaped. One was what I called “ragged-edged” or scalloped, and the oblong-shaped envelop marked “L.”

Q. 23. I hand you an envelope face down, and ask you to examine it and see if you can identify it.

A. (Witness examines the envelop and looking at its face, said;) I can; and looking at the envelop I see the outline of the piece of pulp board which

(Testimony of John C. Tooker.)

I used on the cylinder of the press to smash in the preparation on the paper, making it transparent. This envelop has the words "Cremo Cigar" in white letters on its face. You will notice in looking at the envelop a ragged edge appears where the impression of the preparation was applied to the envelop, and not covered by the green border. That was done by me to press the preparation into the paper. This was one of the first lots I printed for Mr. Cohn, the exact date I cannot give, because we were some time working out this preparation of transparency. [271]

By Mr. TOWNSEND.—The envelop exhibit "FF" is the one to which the witness has referred, in his last statement.

Q. 24. Do you remember if this envelop exhibit "FF," "Cremo Cigar," was made before or after the finished envelop exhibit "L"?

A. It was made before the finished envelop exhibit "L."

Q. 25. I show you two envelopes, face down, and ask if you recognize them, or either of them.

A. (Witness examining the envelopes and looking at their faces says:) I recognize both these envelopes. (Referring to exhibits "N" and "O" with the blue and silver cloud effects.) On the blue and silver covered envelopes I note a mark on the left-hand side of the envelopes like a streak, running up and down, which was done at the time the envelop was printed by a sheet of paper being caught in printing and smashing, as we call it, the top sheet



(Testimony of John C. Tooker.)

on the cylinder, leaving two creases in the top sheet, and the tympan, thus making a streak in the printing of the cut.

Q. 26. How early do you fix the printing of these envelopes with the blue and silver cloud effect borders, exhibits "N" and "O," [272] or the printing of any blanks with oil and a cloud effect border?

A. The exact date I could not give. The preparation on these envelopes have a tendency to run a little more than those printed at the time when I delivered the 10,000 perfect envelopes to Mr. Cohn. It shows me that it was in one of the earlier stages of using the preparation.

Recess. [273]

Q. 27. Do you know whether or not you had actually applied to an opaque sheet an oily preparation for making the transparency for Mr. Cohn and used a border around this transparent space, for the purpose of an envelop, in 1903?

By Mr. BANNING.—Question objected to as leading.

A. Yes; I would say that in those impressions that I made around the holidays I used a preparation given me by Mr. Cohn, which made opaque paper transparent, but I don't say that it was the one printed like the cut the 10,000 was printed from, but that we had the transparency figured out at that time I am sure.

Q. 28. But how about a border?

A. Yes, there was a border on the cut that covered the paper around the transparency.

(Testimony of John C. Tooker.)

Q. 29. In answering Q. 6, you speak of the difficulties encountered and stated how you overcome one of the obstacles, "by cutting a piece of pulp board and gluing to the cylinder to press the sheet tightly on the felt, which would make the preparation sink into the paper and still permit [274] you to carry less of the preparation—this piece of pulp board was cut smaller than the felt, which made the impression on the paper a little away from the border, thereby allowing a little spread so that the preparation would not flow beyond the border, and thereby make the paper transparent further than Mr. Cohn had figured in working out this proposition." Could you illustrate this matter? A. Yes, sir.

Q. 30. Does that drawing represent the idea?

A. This ink line denotes the sheet of paper going around the cylinder, marked A. This denotes the tympan, marked B, where I glued down the piece of pulp board, marked C. This piece of pulp board C used for pressure on the sheet A, which is to be printed over the felt with the preparation. The felt is marked D. The felt D was glued to a block, marked E, and locked on the bed of the press.

By Mr. TOWNSEND.—I offer in evidence the sketch just used by the witness in his explanation, and ask that it be marked Complainant's Exhibit "GG." [275]

Q. 31. Did the use of these oily preparations or inks for borders cause you any trouble or extra work about or on the presses used?

A. Yes. In washing up for a color it usually re-

(Testimony of John C. Tooker.)

quires two washes. In washing up for the preparation it became necessary to go over the press again and again and the rollers more particularly. The least bit of color on the press or rollers had a tendency to discolor the transparency and make it darker or opaque. It became necessary in using this preparation to make the press absolutely, or as near as possible clear. We found another difficulty in using some of the preparations, and it became necessary in order to make the preparation flow as freely as was necessary to use gas-stoves under the press; heating the plate and making the preparation run out smoothly. We finally got these things so that the preparation run perfectly. The transparency that we reached in the earlier stages was inclined to be more dirty and mottled, not smooth. I am sure that around the holidays of 1903 was the time when we first used the stoves; it being the winter time; and the preparation not having inclination at that time to flow freely. [276]

Cross-examination.

(By Mr. BANNING.)

XQ. 32. Did you keep any book or memorandum of any sort showing the time that you were at work for Mr. Cohn?

A. I did not, and if I had it would have been lost in the fire.

XQ. 33. Look at this envelop marked exhibit "R," made of transparent paper, and see whether you have any recollection about it?

A. This is a parchemyn paper. That is printed on

(Testimony of John C. Tooker.)

with one color, the paper in itself being naturally transparent, the coloring in it being used to make it opaque.

XQ. 34. Do you recognize the printing on that envelop as some of your work?

A. I done some printing on paper of this kind for Mr. Cohn, but I cannot say that I printed that particular envelop.

XQ. 35. Here is another envelop exhibit "Q," with the words "Perfecto Cigar" on it; please look at that envelop and see whether you recognize it.

A. I never had anything to do with the printing of that piece of paper. [277]

XQ. 36. Why is it that we see some red around the edge of the cigar outline on this Perfecto envelop?

A. That makes a border, and finishes the end of the transparency having a tendency there to make it opaque and stop the transparency.

XQ. 37. Do you mean that it is the definition or outline to the cigar shape?

A. It finishes the cigar shape; yes, sir.

XQ. 38. About how wide is the line around the shape of the cigar in this Perfecto envelop?

A. From  $1/32''$  to  $1/40''$ ; it varies.

XQ. 39. As I understand your description of the piece of pulp board, it was made smaller somewhat in its dimensions than the felt for applying the oily preparation, so that when the paper was run through the press there would be a greater pressure exerted on the felt coincident with the pulp board than around its edges, which extended beyond the board;



(Testimony of John C. Tooker.)

is that correct?     A. It is.

XQ. 40. In printing this lot of 10,000 envelops for Mr. Cohn that you have described, were the blanks printed one at a time?     [278]

A. The sheets were printed one at a time.

Redirect Examination.

(By Mr. TOWNSEND.)

RDQ. 41. Was it customary to keep office records of work done in the shop before the fire?

A. Yes, it was.

RDQ. 42. Have you any of those office records now?

A. The office records that I had were destroyed in the fire of April, 1906.

JOHN C. TOOKER.     [279]

[Testimony of Edward Epting, for Complainant.]

Mr. EDWARD EPTING, being called on behalf of the complainant and being first duly sworn, doth depose as follows.

(By Mr. TOWNSEND.)

Q. 1. Will you please state your full name, age, residence and occupation?

A. My name is Edward Epting; my age is 41; my occupation is artist, and residence Burlingame, California.

Q. 2. Are you acquainted with Mr. Max M. Cohn, the complainant in this case?

A. I have known him for many years.

Q. 3. Do you know where Mr. Cohn was employed before he took up his present connections with the Zellerbach Co.?

(Testimony of Edward Epting.)

A. He was employed at the Illinois Pacific Glass Company.

Q. 4. Where were you employed at that time?

A. At the same place.

Q. 5. In what capacity and what department?

A. I was in the label department. I had charge of the art department. [280]

Q. 6. Did Mr. Cohn ever consult with you in regard to an envelop? A. He did.

Q. 7. Just what were the circumstances?

A. He had an envelop that he was getting up, which was transparent with a coating, and with a border around it. Mr. Cohn got me to make him up some designs at the time he started in with his envelops. Mr. Cohn had the envelops fixed so that if you put a statement in you could read through them and see the inside characters and addresses.

Q. 8. What was the nature of these designs he asked you to get up?

A. There were quite a number of different designs gotten up. Some with shading around the edges and some with all the solid color in the back, and quite a number of different ones. I don't remember all the different ones I did get up.

Q. 9. Did Mr. Cohn explain to you what the designs were for?

A. Well, one was to have a border around the edge to hide the bleeding of the preparation he put on the envelop. [281]

Q. 10. Was this before or after Mr. Cohn left the Glass Co.?

(Testimony of Edward Epting.)

A. Before Mr. Cohn left the glass company.

Q. 11. I show you an envelop, face down, and ask you to examine the same, and see if you recognize it or anything about it?

A. (Witness, after looking at the envelop and examining the face of the same, said :) I believe I made the same design, or I did make one almost similar. Well, I got up the design with the cloud work around it and had a solid edge all around so as to hide the bleeding of the preparation.

(The above explanation has been in regard to Compl. Ex. "N," with the blue cloud effect.)

Q. 12. After you made the drawings with the cloud effect like exhibit "N," do you know what was done with the drawings? A. We had zincos made.

Q. 13. Did you have anything to do with the getting out or ordering of the zincos?

A. I ordered them.

Cross-examination.

(By Mr. BANNING.)

XQ. 14. Did you make any sketches for zincos for Mr. Cohn [282] of other or different designs from the one shown in this blue cloud effect on this envelop exhibit "N"?

A. I made many others.

XQ. 15. Did you make sketches for zincos for printing solid borders on the envelops?

A. I did.

XQ. 16. I show you an envelop marked exhibit "R," and ask you if you recognize any of your work on that envelop "R"?

(Testimony of Edward Epting.)

A. I believe that is some of my work, sir.

XQ. 17. Did you see any envelops made of transparent stock like this exhibit "R"?

A. Not other than this one just shown me, that I remember.

XQ. 18. Look at this envelop, marked exhibit "L," and see whether you recognize any of your work on it. A. I do.

XQ. 19. For how long a time were you making sketches to make zincos for Mr. Cohn?

A. I could not exactly answer that, but I know that I was making them while Mr. Cohn was working for the Illinois-Pacific Glass Company. [283]

XQ. 20. And for how long a time after he left the glass company?

A. I have done some work for him, but I don't remember just how much I did, as I was busy all the time, and it is pretty hard for me to remember.

XQ. 21. You did some work for him in that line after he left the glass company, as I understand it?

A. Yes, some.

#### Redirect Examination.

(By Mr. TOWNSEND.)

RDQ. 22. Were the zincos for the cloud effect made before or after Mr. Cohn left the Illinois-Pacific Glass Company.

A. They were made before Mr. Cohn left the glass company.

#### Recross-examination.

(By Mr. BANNING.)

RXQ. 23. Do you have any memorandum or writ-



(Testimony of Edward Epting.)

ing of any kind by which you fix the time that you did work for Mr. Cohn?

A. No, I have no memorandum, but remember the circumstances at the time because I used to bring the work to Mr. Cohn when he was working downstairs.

EDWARD EPTING. [284]

San Francisco, March 2, 1911.

[Testimony of William Dolge, for Complainant.]

WILLIAM DOLGE, being called on behalf of the complainant and being first duly sworn, doth depose as follows:

(By Mr. TOWNSEND.)

Q. 1. Will you please state your full name, age, residence and occupation?

A. William Dolge; age, 34; residence, 240 10th Ave., San Francisco; occupation, Certified Public Accountant.

Q. 2. Before entering on your present work as a Certified Public Accountant, where were you employed?

A. I came to San Francisco in August, 1903, and *that* I have been successively employed by the California Wine Association, the Illinois-Pacific Glass Company, Guggenlime & Company, and Lester Herriek & Herriek, Public Accountants.

Q. 3. When did you enter the employ of the Illinois-Pacific Glass Co.?

A. About October 13, 1903.

Q. 4. In what capacity?

A. Chief Accountant. [285]

(Testimony of William Dolge.)

Q. 5. Whom did you succeed at the Illinois-Pacific Glass Co., if you succeeded anyone?

A. Max M. Cohn.

Q. 6. Do you refer to Mr. Cohn, who is here present and who is the complainant in this case?

A. I do.

Cross-examination.

(By Mr. BANNING.)

XQ. 7. When did you make the acquaintance of Mr. Cohn?

A. I must have met Mr. Cohn for the first time in the first two weeks of October, 1903.

WILLIAM DOLGE. [286]

**Stipulation [Concerning Testimony, Etc.].**

It is stipulated by counsel for the parties respectively, that as soon as convenient and practicable the complainant's counsel will have the testimony and exhibits taken at this session beginning February 23d, 1911, returned to the Examiner in Chancery, the Hon. H. M. Wright, to be by him certified and filed with the Clerk of the U. S. Circuit Court; that when filing the complainant's testimony with the Clerk, the Examiner shall also file with the Clerk the testimony and exhibits deposited with him on behalf of the defendant, so that all of the testimony and exhibits in the case may be duly on file; that an order of publication may be obtained by complainant's counsel at such time as he may desire; that a hearing in Chancery before such Circuit Judge, or Judge holding the Circuit Court may be had at such time as the com-

plainant's counsel can arrange for the same, either in San Francisco, or elsewhere in the Ninth Circuit, at any time after April 15th, 1911; which does not interfere with any hearing by either counsel hereto in U. S. Circuit Courts of Appeals; that complainant's counsel will notify defendant's counsel at as early a date as practicable, when a hearing may be had and sufficiently in advance of such hearing to enable defendant's counsel to arrange to attend from Chicago, Illinois; that strict compliance with the Rules relating to the service of printed briefs on counsel, respectively, will not be insisted upon, but [287] that all such briefs shall be served prior to the hearing herein, and with sufficient, reasonable time to each party to reply to the brief of the other party. Service of briefs may be by the ordinary postoffice channel.

CHAS. E. TOWNSEND,

Counsel for Complainant.

THOMAS A. BANNING,

Counsel for Defendant.

San Francisco, March 2d, 1911. [288]

**[Examiner's Certificate to Testimony of Max M.  
Cohn et al., etc.]**

United States of America,

Northern District of California,

City and County of San Francisco,—ss.

I hereby certify that the foregoing depositions contained in pages numbered 46 to 251, both numbers inclusive, being the proceedings upon the taking of testimony in rebuttal in the cause entitled "Max M. Cohn, Complainant, vs. H. J. Heinz Company, De-

pendant, In Equity, No. 15,204, in the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California," were returned to me promptly after the taking thereof by complainant's counsel in accordance with the stipulation contained on page 47 and pages 250 and 251, together with complainant's exhibits marked as follows: Complainant's Exhibits "E," "F," "G," "H," "I," "J," "K," "L," "M," "N," "O," "P," "Q," "R," "S," "T," "U," "V," "W," "X," "Y," "Z," "AA," "BB," "CC," "DD," "EE," "FF," "GG" and "HH," inclusive, and the said depositions, proceedings and exhibits are herewith by me returned, the exhibits being returned separately, identified by the respective letters, together with my signature. Said exhibits are the exhibits referred to in said depositions.

I further certify that previous to giving their testimony the said witnesses Max M. Cohn, S. E. Selling, B. T. Bean, A. Vanderzwiep, John C. Tooker, Edward Epting and William Dolge were by me sworn to tell the truth, the whole truth and nothing but the truth in said cause; that the reading and signing of said depositions were waived by the respective counsel, and that I have retained said depositions for the purpose of delivering the same to the clerk of the court for which they were taken. [289]

I further certify that at the same time when said depositions before mentioned were returned to me there was deposited with me by Charles E. Townsend, Esq., complainant's counsel, a certain bound volume of depositions and proceedings taken before Frances M. Frost, Notary Public at Chicago, Illinois, entitled



“United States Circuit Court, Northern District of California, Max M. Cohn vs. H. J. Heinz Company, In Equity, No. 15,204, Defendant’s Record,” to be returned and filed with the clerk of said court by me, and I herewith return the same.

I further certify that I am not attorney nor of counsel for any of the parties to said cause, nor in any way interested in the event thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this 22d day of March, 1911.

H. M. WRIGHT,

Examiner in Chancery of the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

[Endorsed]: Published and Filed Jun. 2, 1911. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk. [290]

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*Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.*

IN EQUITY—No. 15,204.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY,

Defendant.

Testimony taken for final hearing on the part of the defendant, this first day of December, 1910, at the offices of Banning & Banning, Suite 1632 Marquette Building, No. 204 Dearborn Street, Chicago, Illinois, before Frances M. Frost, a Notary Public in and for Cook County, Illinois, beginning at ten

(Testimony of Julius Regenstein.)

o'clock A. M., pursuant to the annexed notice.

Present, on the part of the complainant, Charles E. Townsend, Esq., and on the part of the defendant, Thomas A. Banning, Esq.

**[Testimony of Julius Regenstein, for Defendant.]**

JULIUS REGENSTEIN, a witness produced, sworn and examined on the part of the defendant, in answer to questions by Mr. Banning, deposed and testified as follows:

Q. 1. State your name, age, residence, and occupation.

A. Julius Regenstein; age, 48; 5523 Kenmore Avenue, Chicago; manufacturer of envelopes.

Q. 2. What is the name of your company that manufactures envelopes?

A. Transo Paper Company.

Q. 3. What is your official position or connection with the Transo Paper Company?

A. I am the president of the Transo Paper Company.

Q. 4. What kind of envelopes does your company, by which I shall refer to the Transo Paper Company, manufacture? A. Transo envelopes. [291]

Q. 5. Do you mean envelopes provided with a transparent portion or window through which the name and address of the party to whom a letter is being sent may be read? A. I do.

Q. 6. The defendant in this case has been sued for infringement of the Cohn patents by the use of envelopes having transparent windows and with the

(Testimony of Julius Regenstein.)

word "Heinz" printed on the envelope so as to show through the transparent window when the envelope is empty, and with a return card in the upper left-hand corner reading: "Return in 5 days to H. J. Heinz Company, 37-39 Washington St., San Francisco, Cal." Please state whether your company manufactured and furnished or sold such envelopes to the defendant.     A. We did.

Q. 7. Those envelopes, of which one has been introduced in evidence by the complainant, were also provided with a green border around the transparent window, with the external lines of the border shaped, apparently, in the form of a cucumber. Was that also true of the envelope that you furnished to the defendant?     A. It is true.

Q. 8. I show you an envelope which Mr. Wright, before whom the complainant's testimony was taken, has certified to be a true copy of exhibit "C," which was offered in evidence by the complainant as representing the envelopes used by the defendant. I show you this certified copy of exhibit "C" and ask you to look at it and see whether it represents the kind of envelopes which your company sold to the defendant, and about which I have asked you in the last two or three questions?

A. This is the envelope we furnished the H. J. Heinz Company.

Q. 9. Please state whether your company, while manufacturing the envelopes which you sold to the Heinz Company, was also manufacturing window envelopes for the public generally.

(Testimony of Julius Regenstein.)

A. We are manufacturing and selling such envelopes to the [292] public generally.

Q. 10. And was that true while you were manufacturing and selling the envelopes complained of to the defendant? A. It is true.

Q. 11. I believe your company has been manufacturing and selling window envelopes for several years. Is that correct? A. That is correct.

Q. 12. Was it so manufacturing and selling prior to the time that you sold the defendant the envelopes complained of? A. Yes.

Q. 13. I show you an envelope having a transparent window, but with no printed matter whatever on its face, and ask you to look at it and state whether it represents the kind of window envelopes that your company was making for the public generally prior to the time that it made the envelopes for the defendant, complained of in this case.

By Mr. TOWNSEND.—Objection is reserved if it is intended to convey by the question that only the envelopes similar to exhibit “C” representing the outlining of a cucumber or pickle is considered to be infringed, because I wish to state now that an envelope such as presented to the witness is deemed to infringe the Cohn patent exhibit “A.”

A. It represents such envelope.

By Mr. BANNING.—Defendant’s counsel offers in evidence the envelope shown to and identified by the witness, and asks that the same be marked “Defendant’s Exhibit Transo Company’s Stock Envelope.”



(Testimony of Julius Regenstein.)

Q. 14. Referring to the "Transo Company's Stock Envelope," please explain briefly how such envelopes were made.

A. In making the Transo envelope, we first in one operation print the inside tint and ring, on large sheets each 29x54 inches, each sheet containing blanks for 24 individual [293] envelopes. After the sheet is printed, as stated before, we on a separate machine print the oil which represents the transparent window. After the paper is thus prepared with transparent windows, the same is cut up in the usual way into envelope blanks and then made into envelopes.

Q. 15. As I understand from your answer, this printing that you speak of is done on a press of some sort. What kind of press is used, if I am right in my understanding?

By Mr. TOWNSEND.—Objected to as irrelevant and immaterial.

A. The ring and the inside tint are printed on a rotary press, and the oil is printed on a so-called cylinder press.

Q. 16. Are these printing presses?

A. They are printing-presses.

Q. 17. As I understand, the transparent window in the envelope is caused by applying to the paper, at the desired portions, some kind of oil or similar preparation; is that correct? A. That is correct.

Q. 18. You may state whether the places on the cylinder press to which the oil, as I will term it for convenience, is applied, are raised above the other

(Testimony of Julius Regenstein.)

surface of the press; or what the fact may be.

By Mr. TOWNSEND.—Objected to as immaterial.

A. The plate from which the oil is printed is higher than the bed of the press.

Q. 19. How is the oil applied to these elevated portions on the bed of the press?

A. It is applied in the same manner as ink is applied to a printing press—by rollers.

Q. 20. I will ask you to tell us whether the transparent windows in the envelopes complained of, which, for convenience, I will hereafter refer to as “Heinz” envelopes, and by [294] which I will have reference to exhibit “C,” are printed on the same presses that you use for applying the oil to the company’s stock envelopes?

A. They are printed on the same presses.

Q. 21. When you came to make the Heinz envelopes, was any change made in the size or shape of the elevated portions on the bed of the press, which you were using to apply the oil to make the transparent windows of the company’s stock envelopes?

By Mr. TOWNSEND.—Objected to as leading and furthermore as irrelevant and immaterial.

A. We used the same plates to make the Heinz envelopes.

Q. 22. As a matter of fact, is there any difference in the size and shape of the transparent windows in the Heinz envelopes and in the company’s stock envelopes?

(Testimony of Julius Regenstein.)

By Mr. TOWNSEND.—Objected to as irrelevant and immaterial.

A. There is no difference.

Q. 23. When your company came to make the Heinz envelopes, what changes or modifications did it make in the press for printing them, as to the inside of the envelope and the ring around the transparent window?

A. Our inside tint plate was changed to what we called mortised and in place of the tint which appears through the window in the stock envelope, we inserted the line or word "Heinz." In regard to the ring, we changed our what we call oval plate to a plate which shows as an outline the shape of a pickle.

Q. 24. Was any change made in the form or size of the transparent window?

A. There was no change made whatsoever.

Q. 25. The outline that you referred to in your answer to my [295] preceding question was applied at what part or portion of the ring surrounding the transparent window?

By Mr. TOWNSEND.—Objected to as leading, and furthermore as indefinite, and even if made definite is immaterial.

A. In our regular oval shape, the outlines are perfect, representing an oval. In the matter of the Heinz envelope we changed this perfect outline to have the outline take the shape of a pickle.

Q. 26. By "outline" do you mean the outside margin or edge of the ring surrounding the transparent window?

(Testimony of Julius Regenstein.)

By Mr. TOWNSEND.—Objected to as leading, and furthermore as immaterial.

A. By outline I mean the extreme end or edges of the design.

Q. 27. Without changing the inside edge or margin of the ring?

A. Without changing the inside edge or margin of the ring.

Q. 28. You have read the two Cohn patents sued on in this case and understand them, have you?

A. I have.

Q. 29. Referring to the second Cohn patent, by which I mean the one applied for last and as a division of the other, I find that both of the claims call for an envelope having a window “through which an addressee’s name on an enclosure may show through.” Look at the drawings of this second Cohn patent and tell us what part is referred to as the window which permits the addressee’s name to be seen through it.

A. The part which is marked 2 in the drawings.

Q. 30. The transparent part, is it?

A. The transparent part.

Q. 31. The claims of this second Cohn patent further say that said window is “in outline characteristic of some symbol of trade.” Referring to the transparent portion as the “window,” I will ask you to state whether or not the window in the [296] Heinz envelope is “in outline characteristic of some symbol of trade.”

By Mr. TOWNSEND.—The question is objected



(Testimony of Julius Regenstein.)

to for lack of proper foundation. That is, no foundation has been laid showing the competency of this witness to pass on the question propounded. Furthermore, it calls for the legal conclusion of the witness and therefore usurps the function of the Court; and, furthermore, with respect to Claim 1, it is an apparent attempt to impeach their own evidence and their own admission made in open court that the combination of Claim 1 of this second patent 824,908, exhibit "B," is embodied in its entirety in the envelope here sued on and identified as complainant's exhibit "C."

A. The window in the Heinz envelope does not represent in shape any symbol of trade.

By Mr. TOWNSEND.—I move to strike out the answer, on the grounds stated in my objection.

Q. 32. Both claims of this second Cohn patent, in addition to requiring the window to be in outline characteristic of some symbol of trade, further call for "permanent advertising matter," or "permanent printed matter on the face of the envelope," which advertising matter or printed matter the claims say is "related to and in juxtaposition with the outline of said window"; and in the first claim this permanent printed matter is required to be "on said tinted border" of the window. Disregarding the return card on the Heinz envelopes, is there, in the Heinz envelopes, any "permanent advertising matter" "appearing on said tinted border," or is there any "permanent printed matter on the face of the envelope" "co-operating with the outline of the

(Testimony of Julius Regenstein.)

window to indicate a particular brand of goods”?

By Mr. TOWNSEND.—Question objected to as leading; [297] as an incomplete statement of each claim; as confusing the two claims; as calling for the legal conclusion of the witness; and furthermore that the witness has shown no proper qualifications enabling him to testify to the matters of fact; furthermore, as an obvious attempt to impeach, contradict, or otherwise modify their admission referred to in respect to Claim 1, as being infringed.

A. The only advertising matter which appears on the Heinz envelope is the outline shape of a pickle.

By Mr. TOWNSEND.—I move that the answer be struck out on the grounds stated in the objection, and furthermore as not responsive.

Q. 33. The first claim of this second Cohn patent, after speaking of the tinted or colored border, calls for “permanent advertising matter forming no part of the address appearing on said tinted border, and related to and in juxtaposition with the outline of said window.” Is there anything of this kind on the Heinz envelopes, or had there ever been?

By Mr. TOWNSEND.—I make the same objection as made to the last question.

A. There is not nor ever was.

I move that the answer be struck out on the grounds stated in the objection.

Q. 34. The second claim of this second Cohn patent, after requiring the window to be in general outline characteristic of a symbol of trade, calls for “permanent printed matter on the face of the envel-

(Testimony of Julius Regenstein.)

ope, related to and in juxtaposition with the outline of the window and co-operating with said outline to indicate a particular brand of goods." Is there anything of this kind on the Heinz envelope; or has there ever been? [298]

The question is objected to as leading; as an incomplete statement of the claim; no proper foundation laid; calling for the legal conclusion of the witness; ignoring the doctrine of equivalents.

A. There is nothing on the Heinz envelopes but the outline of a pickle.

Q. 35. Is the word "Heinz," leaving out the return card on the corner, on the tinted border surrounding the transparent window?

Objected to as leading; no proper foundation laid; and incompetent and immaterial.

A. It is not.

Q. 36. Is the word "Heinz," leaving out the return card, on the face of the envelope, or where is it?

Objected to as leading, and no proper foundation laid, and as not a proper statement or attempted construction of the claim.

A. The word "Heinz," as stated, does not appear on the face of the envelope, but appears on the inside of the bottom flap.

Q. 37. Under what patent is your company manufacturing envelopes?

Objected to as irrelevant and immaterial and leading.

A. Under the Reese patent.

Q. 38. Give us the date and number of the Reese

(Testimony of Julius Regenstein.)

patent, and the date of the application for the same.

Objected to as irrelevant and immaterial; furthermore, on the ground that if this Reese patent is referred to for purposes of anticipation it has not been set up in the answer or otherwise noticed to the complainant, as required by section 4920, U. S. Revised Statutes. [299]

A. The date of the Reese patent is August 9, 1904, No. 766,902. Application filed January 15, 1904.

Q. 39. Do you know whether George Reese, named in this Reese patent, is living?

Objected to as irrelevant and immaterial.

A. He is dead.

Q. 40. Is the Julius Regenstein mentioned as an assignor of a half interest of this Reese patent yourself?

Same objection.

A. Yes.

Q. 41. If you know, state what Reese's business was at or prior to the time of his application for this Reese patent.

Same objection. Furthermore, as calling for the opinion of the witness and as mere hearsay.

A. Mr. Reese was a lithographic designer and was in charge of the lithographic department of the American Can Company of Chicago.

Q. 42. This Reese patent appears to have been applied for, as you have already said, January 15, 1904. About when, with reference to that date, did you, either by yourself or in association with Mr. Reese or others, begin work upon or preparation for the



(Testimony of Julius Regenstein.)

manufacture of envelopes having transparent windows formed by the application of oil to a portion of their surfaces?

Objected to as leading; no proper foundation laid; on the further ground that the patent itself is the best evidence of its date of issue, number, and date of application.

A. In November, 1903.

By Mr. TOWNSEND.—I move that the answer be struck out, as neither it nor the question have any bearing on the issues in the present case. [300]

Q. 43. Do you remember receiving a letter that we wrote you December 16, 1903?

Objected to as irrelevant and immaterial.

A. I remember that at the time Mr. Reese and I called on you, that you said you would investigate the matter which we laid before you, and I remember that we received some information from you, but I do not remember at this time whether I received a letter or whether the information was given to me verbally.

It is moved that all that portion of the answer preceding "I do not remember at this time" be struck out, as not responsive to the question.

Q. 44. I will ask you to examine your letter files, when you return to the office, and see whether or not you find a letter from us dated December 16, 1903, addressed to yourself, and referring to an envelope shown by yourself and Mr. Reese to us, and in the meantime I will show you our letter-press copy book and ask you to look at a copy of a letter directed to

(Testimony of Julius Regenstein.)

you and dated December 16, 1903, and ask you to state what the fact may be as to whether or not, at the time of the interview referred to in such letter, you and Mr. Reese called at our office and showed us an envelope, as referred to in such letter.

Objected to as leading; further, as irrelevant and immaterial and no proper foundation laid.

A. Mr. Reese and I called at your office and showed you such an envelope as referred to in your letter.

By Mr. BANNING.—Defendant's counsel shows the letter-press book of his firm, Banning & Banning, to complainant's counsel, and shows him the copy of a letter addressed to Julius Regenstein, and dated December 16, 1903, and inquires whether he has any objection to the use of such copy in [301] place of the original, with the understanding that the witness will examine his files and produce the original letter if he is able to find the same.

By Mr. TOWNSEND.—There is no objection to the use of the copy in place of the original, providing it is shown satisfactorily that the witness actually received the original.

Q. 45. The letter which I have shown you as it appears in our letter-press book reads as follows:

“December 16, 1903.

Mr. Julius Regenstein,  
135 Adams Street,  
Chicago, Ill.

Dear Sir:

We have looked up the patent on the ‘Outlook’ Envelope, of June 10, 1902, and find that it was issued

(Testimony of Julius Regenstein.)

to Americus F. Callahan, of Chicago. The patent has one claim and it is limited to 'an envelope having a comparatively opaque face and a display opening therein having a transparent covering,' etc. From this you will see that there must be an 'opening' in the envelope and that it must have a 'covering' which is separate and distinct from the body of the envelope. It would appear, therefore, that the envelope shown by yourself and Mr. Reese will not infringe the Callahan patent. It has no 'opening' and no 'covering' for such opening.

We consider that the envelope which you showed us is patentable over the envelope claimed in the Callahan patent. We further consider that the paper manufactured with opaque portions and transparent portions properly spaced and arranged to permit the envelope blanks to be cut out is also patentable. These two patents, however, will have to be applied for [302] and taken out separately, inasmuch as envelopes form one class in the Patent Office and paper another. Two patents will have to be taken if it is desired to cover both the envelope and the paper from which it is made.

Yours very respectfully,

BANNING & BANNING."

Please state what kind of an envelope it was that you showed to us and that is referred to in the above letter.

The question is objected to as irrelevant and immaterial and that it has not been shown that any such alleged envelope embodied the patented combination

(Testimony of Julius Regenstein.)

of the patent here sued on, and therefore any such testimony is irrelevant and incompetent to either show anticipation or any prior art.

A. We showed you an envelope with a transparent window on the face.

Q. 46. What formed or made the transparent window on the face of the envelope you showed us in December, 1903?

Same objection.

A. As to the shape, I do not remember whether the window had the shape of an oval or a square. The use of oil made the transparent window.

Q. 47. If you know, please state who made the envelope that you showed us in December, 1903.

Same objection.

A. Mr. George Reese.

Q. 48. The Reese mentioned in this Reese patent?

A. Yes, sir.

Recess. [303]

Q. 49. How was the envelope which you showed to us in December, 1903, as respects a ring or border around the window, as shown in your company's stock envelopes?

Same objection.

A. The envelope which I showed you in December, 1903, had no ring around the transparent window.

Objection to last question is withdrawn.

Q. 50. When did you and Mr. Reese begin to make envelopes with a transparent window, dating, say, from the time you showed us such envelope in December, 1903?



(Testimony of Julius Regenstein.)

Objected to as leading and assuming a fact not proven or established by the record.

A. We started to make transparent envelopes immediately after we saw you.

Q. 51. By transparent envelopes, do you mean envelopes with transparent windows? A. I do.

Q. 52. Beginning, say, with the first of January, 1904, please tell us what you did, giving your operations in their regular order, so far as you can.

Objected to as indefinite, irrelevant and immaterial.

A. During the first part of January, 1904, we made envelope blanks transparent by the use of oils, creating a window. This work was done on a Universal printing press. After the blanks were made transparent, it showed immediately that no matter what oils we used, the oil would bleed or be out of register. In other words, extending over the intended surface represented by the face of the printing block. As soon as we found out early in January that the oil was found to bleed some, as old printers, we decided that we had to go back to our old trick and print a border which was intended to cover such bleeding of the oil which could not be prevented. [304] We had at that time used various sizes and colors of blocks, and this feature of experimenting did not consume more than one or two days.

Q. 53. The blocks that you refer to in your answer were which ones—the ones applying the oil or the ones applying the ring or border around the window?

A. The block or printing plate is a common expres-

(Testimony of Julius Regenstein.)

sion used by printers, and in both cases I referred to printing plates.

Q. 54. You speak of making the blocks of different sizes. Which blocks do you refer to there?

A. I refer to printing plates for printing the ring. And speaking of sizes, I refer to the width of the border.

Q. 55. Do I understand that you tried printing plates or blocks for the rings that printed the rings of different widths, that is, broader or narrower, around the window?

Objected to as leading.

A. Broader or narrower.

Q. 56. What was the difficulty with the first rings that you printed, that caused you to try different sizes or widths for the rings?

A. The first rings we printed were too narrow, and we found it safer to make the rings slightly wider.

Q. 57. You say you did your first work in January, 1904, on a Universal press. Where was this located, if you remember?

A. This press was located in the print-shop of the American Colortype Company, corner of Roscoe and Racine Streets, Chicago.

Q. 58. After you had increased the width of the ring or border, how did you find the envelopes?

Objected to as indefinite, irrelevant and immaterial.

A. The increasing of the width of the border was more satisfactory. [305]

Q. 59. I suppose that the more an oil spreads or

(Testimony of Julius Regenstein.)

bleeds, the wider or broader the rings needs to be; is that the case?

Objected to as leading, as being the testimony of counsel and not of the witness.

A. The ring, as I stated, is printed to cover the bleeding of the oil. At times the ring will not do the work and the oil will far extend over the ring of the envelope, and spoil the envelope.

Q. 60. In what way does the spreading of the oil spoil the envelope, beyond impairing its appearance, if at all?

Objected to as leading.

A. The spreading of the oil does not interfere with the usefulness of the envelope, but spoils its clean appearance.

Q. 61. When would you say that you had envelopes made or completed with transparent windows and with borders or rings around the windows, as you have explained in the last few answers?

Objected to as not shown that this witness ever made or constructed such an envelope, and assuming something not established by the record.

A. During January, 1904.

Q. 62. You may state the fact, whatever it may be, as to whether or not you yourself personally assisted or had anything to do with the making of these envelopes with rings or borders and transparent windows, as you have explained, in January, 1904.

A. I suggested the printing of the ring, and my workmen under my direction done the work.

Q. 63. Did you see it being done? A. I did.

(Testimony of Julius Regenstein.)

Q. 64. Do you know whether any of those old envelopes, showing [306] your first application of the ring or border, around the transparent window, are still in existence? A. They are.

Q. 65. Look at these two envelopes that I now show you, and state what they are, if you know.

A. The envelopes I hold in my hand are some of the very first envelopes we made in January, 1904.

Q. 66. These two envelopes which you have identified appear to have different colored borders. Please tell us about that.

Objected to as irrelevant and immaterial, and for lack of proper foundation.

A. We had tried various inks in the first place to satisfy ourselves as to the proper color-effect, and also to get the proper covering ink to be sufficiently opaque.

Q. 67. Referring to this envelope which has the lighter border of the two, what colored ink was that originally? A. White ink.

Q. 68. And what was the color used for the other envelope ring? A. I should say a light olive.

Q. 69. Referring now to the transparent window, shown in these two envelopes which you have identified, how does it compare in shape and size with the transparent window in the company's stock envelope and in the Heinz envelopes?

The question is objected to as leading, and assuming that these two specimen envelopes introduced or referred to, rather, last by the witness show or repre-



(Testimony of Julius Regenstein.)

sent a commercial envelope with a transparent window.

A. The shape and size of the window of the envelope in question is practically the same as in the Heinz envelopes.

Q. 70. What would you say as to the similarity in size and shape [307] of the printing blocks, by which the oil was applied to these two old envelopes, and the blocks for applying the oil to the company's stock envelopes and the Heinz envelopes?

Objected to as irrelevant and immaterial.

A. The size and shape of blocks used for printing the oil on the envelopes in question is practically the same as appearing in the stock envelopes.

Q. 71. From the time you began in January, 1904, to the present time, has there been any substantial change in the shape and size of the blocks for applying the oil to produce the transparent windows?

A. No change of consequence.

I move to have the answer struck out as not responsive to the question and being the conclusion of the witness as to what is consequential and inconsequential.

Q. 72. Have there ever been any blocks for applying the oil, used by you or your company, different in shape and size from those used for applying the oil in these old envelopes and for applying the oil in the Heinz and stock envelopes?

Objected to because the envelopes of Heinz and the old envelopes, so called, show they are made from different sized blocks.

(Testimony of Julius Regenstein.)

A. No change of consequence.

Q. 73. If the same blocks were used, but the width of the border or ring changed, would there be any difference in the apparent size of the window or transparent portion?

A. If the same blocks were used for the window, the window would be the same size.

Q. 74. Would not the size of the window or transparent [308] portion which appeared on the envelope, depend somewhat upon the inside size of the ring, so that if a broad ring were used, with a smaller area within its border, would not the transparent portion that appeared after the ring was applied, be correspondingly reduced?

Objected to as leading, and furthermore as incompetent and immaterial, and furthermore assuming, if reference is had to the old envelopes, that they have a transparent window.

A. If the width of the border is enlarged towards the window, the plate which is to print the window would have to be made correspondingly smaller.

Q. 75. If the border were carried further out as well as further in, would there be any necessity for lessening the size of the printing blocks for applying the oil?

Objected to as irrelevant and immaterial.

A. In carrying the border further out, no change would be necessary, but if the border should be carried too far in, the size of the oil printing block would have to be changed.

Q. 76. How do you determine, as a practical matter, how wide or broad the ring should be?

(Testimony of Julius Regenstein.)

Objected to for lack of foundation or qualification of the witness.

A. The ring should be at least a quarter of an inch wide, to be safe.

Q. 77. It must be wide or broad enough to cover the creeping of the oil, if you desire to obscure or cover up such creeping, must it not? A. Yes.

Q. 78. Counsel has once or twice intimated that the windows in these old envelopes were not transparent. Without going into any question of relative transparency, I will ask you to look at the inclosure in one of them and state whether [309] you can read the words on the inclosure through the transparent window. A. I can.

By Mr. BANNING.—Defendant's counsel now offers in evidence the two envelopes identified by the witness, and asks that the same be marked Defendant's Exhibits January, 1904, Envelopes No. 1 and No. 2. No. 1 being applied to the envelope in which the ring is formed of white ink.

By Mr. TOWNSEND.—The receipt in evidence of Defendant's Exhibits January, 1904, Envelopes No. 1 and No. 2, is objected to as irrelevant and immaterial.

Q. 79. After you and your associates, or whoever worked with you, had made these old envelopes in January, 1904, what did you do further toward getting them ready for the market or toward entering upon the business of manufacturing and selling envelopes with transparent windows, like those in controversy in this case?

(Testimony of Julius Regenstein.)

Objected to as leading, and calling for the self-serving statements, opinions, and conclusions of the witness.

A. After the border matter was settled in January, 1904, we gave our attention, up to this day, to the perfecting of the transparency of the window.

Q. 80. Do I understand that the matter of improving and perfecting the transparent portion of the envelopes was a difficult matter?

A. A very difficult matter.

Q. 81. Without going into details as to the preparation of the oil or whatever it is that you use, you may state what difficulties you found in that matter, if any.

A. The difficulties in preparing the windows properly were found on account of atmospheric conditions, nonelastic oils, and various other causes.

Q. 82. You may state what the fact may be as to losses of envelopes through the sticking of the sides together, where the transparent windows were formed, or matters of that kind? [310]

A. We have found and experienced in 1906 that the transparent window would stick to the back of the envelope, and have spoiled at least forty to fifty million envelopes in that manner.

Q. 83. You may state whether your company has much money invested in the business of manufacturing the transparent window envelopes, or has spent much money for that purpose, from first to last?

A. The loss to our company in perfecting envelopes is over \$100,000.00.



(Testimony of Julius Regenstein.)

Q. 84. How far do you consider that your company has brought the manufacture of these transparent envelopes to a condition where they are practical and satisfactory to the public?

A. Our envelope is now considered the most perfect transparent envelope in existence, and has a sale in this country as well as in foreign countries.

Q. 85. To whom, in your opinion and from your knowledge of the facts, is due the credit of bringing the manufacture of transparent window envelopes, like those in controversy, to a condition where they are practical, useful, and satisfactory to the public?

By Mr. TOWNSEND.—While we are willing to concede the utility, practicability, and popularity of the envelope here in controversy, the question is objected to as calling for the mere opinion of the witness.

A. The credit is due to Mr. Ernest Sauerman and myself.

Q. 86. Mr. Sauerman is one of your co-laborers or associates, is he?     A. Yes.

Q. 87. Did you ever know of any envelopes like those in question being on the market, that were manufactured by complainant in this case?

A. I do not. [311]

Q. 88. Do you know of any other concern in the country, outside of your company, that is manufacturing the transparent window envelopes, like the ones in controversy in this case?

A. To my knowledge, I am the only manufacturer, and have never seen any one-piece transparent en-

(Testimony of Julius Regenstein.)

velopes made by any one else in this country.

Q. 89. Mr. Regenstein, what was your business or work before you took up the matter of these transparent window envelopes with Mr. Reese?

A. I was the Western General Manager of the American Colortype Company.

Q. 90. What kind of work did that company do?

A. The American Colortype Company were the originators and producers of the finest three-color printing in America.

Q. 91. Give us briefly a statement as to how three-color work is printed. I am only asking as to the printing end of the operation, and am not specially asking about the preparation of the plates to secure three-color effects.

Objected to as irrelevant and immaterial and as having no bearing on the issues of the patent case.

A. Three-color printing is done or printed from three half-tone plates or duplicates of such half-tone plates. The first impression is made from the plate with yellow ink; after the yellow impression is made, in some cases within four hours, and other cases within twelve hours, the next plate is printed with red ink over the yellow; then the sheet is left unprinted for twelve hours and then finished up by printing the third plate with blue ink over the yellow and red.

Q. 92. Then, as I understand you, the paper is passed three times through the press?

A. That is correct. [312]

Q. 93. In case there is not a perfect registration

(Testimony of Julius Regenstein.)

in running the paper through the press for the different colors, or in case the plates vary in size, what condition is the margin or edge of the picture or whatever the three-color work represents, left in?

Objected to as leading; as immaterial; and furthermore is incompetent to show anticipation of the subject matter here in issue, by any such testimony.

A. In case the three plates are not absolutely of one size, or that the feeding of the printing-press is done poorly, or in cases where the paper, on account of atmospheric conditions, changes its size, the colors used will overlap on the edges of the picture.

Q. 94. You may state whether or not that overlapping or irregular registration of the colors at the edges is a matter of indifference or an objectionable thing.

Same objection; and furthermore as calling for the opinion of the witness.

A. It is objectionable.

Q. 95. What, if anything, was done in the three-color printing, where, owing to the causes you have mentioned, the edges or margins of the picture were left in an unsatisfactory or objectionable condition, to remove or cover up or conceal the irregularities around the margins of the picture?

Objected to as irrelevant, incompetent and immaterial.

A. Where the customer is particular and is willing to pay the price in order to make it a first-class job, a border is printed around such imperfect three-color picture, and, invariably, this border is made

(Testimony of Julius Regenstein.)

deliberately of such a size that part of the border will cover the spreading or bleeding of the three colors. [313]

Q. 96. How long has that, to your knowledge, been the practice in three-color printing?

Same objection.

A. To my personal knowledge, this has been done for the last twenty years, and I believe I can say that this idea of printing borders to cover imperfections in printing was known to the old wood engravers two hundred years ago.

I move that all that portion of the answer after "twenty years" be struck out as not responsive to the question.

Q. 97. Of what utility was this border that was printed on three-color pictures beyond covering up and concealing and giving a definite outline?

Objected to as irrelevant, immaterial, and incompetent.

A. The purpose is a useful and ornamental one.

Q. 98. In what way did the border on color pictures serve the purpose that the border serves on these one-piece transparent window envelopes?

Objected to as leading in the extreme, and assuming a fact not proven or apparent from the record.

A. For the same purpose stated before—useful and ornamental.

Q. 99. In what way, in the case both of the three-color pictures and these one-piece transparent window envelopes, is the border useful and ornamental?

A. In one case, the one-piece envelope, the oil is



(Testimony of Julius Regenstein.)

creeping, bleeding, and overlapping, and in the other case the colored inks are creeping, bleeding, and overlapping.

Q. 100. In both cases, the objection to the creeping, bleeding, or overlapping, is removed by the use of the border, is it?

Objected to as irrelevant and immaterial.

A. In the case of the three-color work, the creeping, bleeding, and overlapping, is removed, but not in all cases, [314] as far as the one-piece transparent window is concerned.

Q. 101. What difference is there in the purpose or object for which the border is used, in the three-colored pictures and in the one-piece transparent window envelopes?

Objected to as irrelevant and immaterial, and on the further ground that a combination claim cannot be shown to be anticipated or *limited* by the mere fact that an element of the combination may have been old, or that there may have been some analogous use of an element in another art.

A. None whatsoever.

Q. 102. In both cases, as I understand, it is to cover up and conceal what might otherwise be an unsightly or objectionable margin; is that correct?

Same objection.

A. That is correct.

Q. 103. Three-color work is done by printing presses and printing operations, is it? A. It is.

Q. 104. Is that also true in applying the border

(Testimony of Julius Regenstein.)

or ring around the transparent portion of these envelopes?

Objected to as leading, incompetent and immaterial.

A. That is true.

Q. 105. And in both cases the border is formed with some kind of an ink, is it?

A. The border is printed with ink.

Q. 106. If you have present here any samples of three-color work that will illustrate or show the use of the border, as you have described, please produce the same.

Objected to as irrelevant and immaterial, and on the grounds that anticipation or limitation of the claims in issue cannot be proven or shown by such line of examination. [315]

A. I have.

Q. 107. This book which you have handed me is entitled on the outside of the front cover: "Osborne Art Calendars for 1900," and on the first page I find at the top "Annual Catalogue, 1900," and at the bottom of the page I find "Copyright, 1899, The Osborne Company, 253 Broadway, New York." What do you know about the publication of this book or calendar?

Objected to as irrelevant and immaterial and not competent to show any prior art, as far as the present case is concerned.

A. This book was published in 1899 by the Osborne Company, of New York.

Q. 108. You may state whether you had knowl-

(Testimony of Julius Regenstein.)

edge of its publication at that time.

A. I had no knowledge.

Q. 109. Please examine this book and state whether or not you find in it any of your own work?

Same objection.

A. In regard to this book published by the Osbourne Company, I cannot tell at this time which of the plates, if any, were made by the American Three-Color Company. At the time this book was published, the Osbourne Company of New York were not a part of the American Colortype Company, which was organized, I believe, in 1901.

I move that the answer be struck out as not responsive to the question, and on the further ground that the witness has stated that he had no knowledge of the publication of this book at the time it is purported to have been published.

Q. 110. If you know, please tell us how long the Osbourne Company has been publishing Art Calendars similar to the one we are discussing.

A. I cannot state definitely, but I believe about fifteen [316] years.

Q. 111. Please point out some representative picture in this book or art calendar that will illustrate the use of a border for covering up and concealing imperfect or objectionable margins, and giving definite outline or definition to the picture; and also some picture that will illustrate the objectionable margins of the pictures, which have been left exposed or uncovered by the nonapplication of a border to cover them.

(Testimony of Julius Regenstein.)

Objected to as leading; as incompetent to show any prior art; and on the further ground that no anticipation can be shown or proven by this as a printed publication, as the same has not been noticed to the complainant, as required by statute.

A. A specimen in which the plates overlap appears in the plate No. 4654, opposite page 16; and a plate on which the olive green tint border is printed over the margin appears on page 38, Continental Building & Loan Association Calendar.

Adjourned until Friday, December 2, 1910, ten o'clock A. M.

Chicago, Illinois, December 2, 1910.

Parties met pursuant to adjournment. Present as before.

Q. 112. You have pointed out two illustrations in this Osborne Art Calendar for 1900, opposite page 16 and on page 38, to illustrate the running or overlapping of the colors at the edges or margins of the picture, and the covering and obliteration of such ragged or objectionable edges, by printing a border around and over the same. In selecting these two illustrations, have you meant that they were the only illustrations of such work in the book? [317]

Objected to as not a correct statement of the testimony of the witness; as leading and suggestive; and furthermore as being irrelevant and immaterial.

A. In this book are a number of prints or subjects representing both kinds.

Q. 113. I notice in this picture on page 38 that the olive green tint, if that is a correct description of it,



(Testimony of Julius Regenstein.)

appears darker in a narrow strip or border around the colored portion of the picture. Why is there this difference in appearance of the tints, if you know?

Objected to as irrelevant and immaterial.

A. This line in question is darker than the balance of the border on account of printing the tint over the three colors.

Q. 114. In answering Q. 108, which asks you whether you had knowledge of the publication of this book at the time it purports to have been published in 1899, you stated that you had no knowledge. How long have you known of the publication, by the Osborne Company, of books similar in kind to this particular one before you?

Objected to as irrelevant and immaterial, that as a printed publication it has not been noticed to the complainant; that the question is leading and suggestive that there have been other books previously published by this company.

A. Since 1901.

Q. 115. You may state what the fact may be as to whether or not the three-color company with which you were connected ever made any three-color pictures for the Osborne Company's Art Calendar, and if so, about when?

Objected to as immaterial.

A. The American Colortype Company, the concern with which I [318] was connected, furnished the plates for the Osborne Company for the printing of their Art Calendars in 1901, the Osborn Company being a part of the American Colortype Company.

(Testimony of Julius Regenstein.)

Q. 116. When or what year or years did you see the Osborne Company's Art Calendars, for which your firm furnished plates?

Objected to as incompetent and immaterial.

A. In 1901.

Q. 117. You may state what the fact may be as to whether the Osborne Company, for a number of years, has been getting out calendars similar in kind to the one that you have produced.

Same objection.

A. I believe the Osborne Company has published such calendars for the last fifteen years.

Q. 118. How did the colored pictures, in the other calendars which you have seen, published by the Osborne Company, compare with the pictures in this one, as to the use of a border, or the nonuse of a border, the covering up or non-covering up of the margins or edges, as shown in this particular book before us?

Same objection.

A. Such borders are used by the Osborne Company up to this date.

Q. 119. How generally has it been the practice in three-color printing, to use borders printed around the margin of three-color pictures, to cover up or conceal irregularities or objectionable appearances in the edges, due to imperfect registration or other causes?

Same objection.

A. It is the universal practice.

Q. 120. And for how long a time has such been the

(Testimony of Julius Regenstein.)

practice, to your personal knowledge? [319]

Same objection.

A. To my personal knowledge, it is the practice, so far as three-colored printing is concerned, for the last sixteen years, and, as far as color printing from plates, which are not three-color plates, is concerned, for the last twenty years.

Defendant's counsel offers in evidence the Osborne Art Calendar for 1900, produced by the witness, for the purpose of showing illustrations of both the objectionable appearance around the border or margin of three-color pictures, due to the overlapping of running of the colors, or other causes, and of the covering up and concealing of such objectionable appearances, by the printing of a border around the picture, with particular reference to the pictures shown opposite page 16 and on page 38 of such book, and asks to have the same marked "Defendant's Exhibit Osborne Art Calendar for 1900."

By Mr. TOWNSEND.—The receipt in evidence of the exhibit last offered is objected to as irrelevant, incompetent, and immaterial, and insufficient to show any prior art.

Q. 121. I notice in this book, on page 7, a cut numbered 4514, "Tales of Chivalry"; another cut on page 20, numbered 2024, "The Bride and the Fortune Teller"; and another cut, on page 32, numbered 2603, "A Florentine Girl"; which appear to have a gilt or golden colored border. What is that color termed in the art?

Objected to as immaterial.

(Testimony of Julius Regenstein.)

A. Gold border.

Q. 122. Is it printed on?     A. It is.

Q. 123. What is the object of that printed gold border, such [320] as I have called your attention to?     A. It is done to beautify the job.

Q. 124. In beautifying the job, what, if any effect, does it have on the concealing or covering up of imperfections or objections in the border of the picture?

Objected to as leading; also as incompetent and immaterial.

A. The gold band or border around the colored print is made deliberately wider, in order to cover up the bleeding of the three-color work, and the ornamental feature of the design beautifies the job.

Q. 125. I think you spoke yesterday of some cases where, through using a border too narrow, the imperfections in the edge or margin of the picture or other work, was not properly covered. I will ask you to look at this picture on page 23, "The Florentine Girl," and tell us whether it illustrates such careless or imperfect work.

A. The subject, "A Florentine Girl," illustrates distinctly careless plate-making. The mistake was made by the engravers, who made the oval gold plate.

Q. 126. I call your attention to the picture on page 8 of this book, numbered 4504, "A Connoisseur," and the plates on page 12, numbered 4113, "Knickerbocker Times," and numbered 4154, "An Old Road in Virginia—Sunset," and the plate on page 36, numbered 6024, "Under the Willows," not to mention other plates or pictures, and ask you whether they



(Testimony of Julius Regenstein.)

afford illustrations of objectionable edges or margins in the pictures, due to the overlapping or running of the colors, where, to save expense or for other causes, no border was printed on?

Objected to as incompetent and immaterial; also as leading and suggestive, and the assuming of something not apparent from the record. [321]

A. They do.

Q. 127. Do you know what the practice has been in the printing art, distinct from the three-color art particularly, as to the use of means of any kind for covering up or concealing objectionable edges or margins, in the work being done?

Objected to as irrelevant and immaterial.

A. To my knowledge, the printing of borders and tints over overlapping or bleeding colors, this fact has been known to me for the last twenty years, and is common, so far as all color printing on printing-presses is concerned, from printing plates; also color printing on lithographic presses, from stones, and other materials used.

Q. 128. If you have made any samples to illustrate the printing of borders in the printing art, as referred to in your last answer, please produce them?

This entire line of examination is objected to as irrelevant, incompetent, and immaterial; unless it be shown that this witness' experience was based on work in or work involving the manufacture of one-piece envelopes of substantially the character here in controversy.

A. The specimens which I hold in my hand were

(Testimony of Julius Regenstein.)

printed under my directions early this week.

Q. 129. What do these two samples that you have produced illustrate or represent?

Same objection.

A. These samples represent that, where an undersized paper is used, and the ink used is not sufficiently stiff, there is a likelihood that the edges of the print will appear unclean and ragged. In order to perfect the job, the printing of the border with stiff ink will do away with such imperfections.

Q. 130. How long, to your knowledge, has it been the practice [322] in the printing art, to print borders to cover up imperfections in the edges of the work, as shown in these samples that you have produced?

Same objection.

A. I have had such knowledge for the last twenty years.

Q. 131. What kind of paper or quality of paper was the printing done on, in these samples that you have produced?

A. The printing is done on an undersized paper, used by the "Saturday Evening Post" on its cover.

By Mr. BANNING.—Defendant's counsel offers in evidence the sample produced by the witness, to illustrate the use of borders in the printing art, and asks that the same be marked "Defendant's Exhibit Illustration of Printers' Border."

Q. 132. If you made a batch of your one-piece transparent window envelopes without a border around the window, what would a printer naturally

(Testimony of Julius Regenstein.)

do, in the exercise of his knowledge and skill in the printing art, to give a more finished or desirable appearance to the window, upon observing that the oil had run or crept into the paper around the margins or edges?

Objected to as leading; that no proper foundation has been laid; and as calling for the mere self-serving opinion or conclusion of the witness.

A. A printer would print opaque ink over such imperfections, and, if he was a carpenter, he very likely would nail a board over it.

Q. 133. In printing a border around the window, what, if anything, would he be doing different from or contrary to what he had been accustomed to do for the past twenty years, to your knowledge?

Objected to as no proper foundation laid; and that it calls for the self-serving opinion and conclusion of the [323] witness.

A. Any printer would print a border of opaque ink—the thing he always does when he wants to cover imperfections.

Q. 134. Is that a part of the knowledge and experience and expedience of the printers' art?

A. It is.

Q. 135. And has been, to your knowledge, for how many years?

Objected to as incompetent and immaterial.

A. To my knowledge, for twenty years.

Q. 136. You yesterday identified some old one-piece transparent window envelopes as having been made as early as January, 1904, which showed a

(Testimony of Julius Regenstein.)

border printed around the transparent windows. Why did you not apply for a patent on that border, or the window of the envelope provided with it, if you did not?

A. I did not apply for a patent, because it seemed to me ridiculous to ask for a patent on a thing or operation which I and others had done and made for years, and I felt, if I should come to you and the Patent Office for such a patent, that you would give me the laugh.

Q. 137. Did you see anything in what you had done in applying the border that you regarded as invention?

Objected to as irrelevant and immaterial; as leading, and calling for the mere self-serving opinion and conclusion of the witness. I move that the answer to Q. 136 be struck out, as being the self-serving afterthought and conclusion of the witness.

A. I did not, since I had done the same thing which I was doing right along.

Q. 138. When you saw that the oil ran or bled, into the paper, how long did it take you to know what to do to remove the difficulty? [324]

Same objection.

A. The time is so short that I cannot state the same, since it was simply a thought.

Q. 139. Did you do anything more than apply the knowledge you had of the printing art, to the situation?

Same objection.

A. I did not.



(Testimony of Julius Regenstein.)

Q. 140. I notice that the claim of the first Cohn patent, by which I mean the patent first applied for, says that the envelope called for has "an unpunctured face," and that the envelope is made of "relatively opaque stock." How is it with these old envelopes that have been identified by you as made in January, 1904?

A. The envelopes made in 1904 have an unpunctured face and are made of relatively opaque stock.

Q. 141. Please read the claim of this first Cohn patent, and see whether or not it is applicable to and readable upon these old January, 1904, envelopes?

The question is objected to as leading; no proper foundation laid; and calls for the legal conclusion and the self-serving opinion of the witness.

A. I have read the claim. This claim is correct, as far as the envelopes are concerned which were manufactured in January, 1904.

Q. 142. How far, if at all, has your business for, say, the last twenty years, brought you in contact with printers and the printing art generally?

Objected to as irrelevant and immaterial, unless it is shown that the witness' experience included the manufacture of envelopes similar or analogous to these here in question.

A. For four years my business was the business of a photo-engraver, making all kinds of printing plates. In addition [325] to this business, I, in 1894, went into the business of making and printing three-color plates. Three gentlemen and myself

(Testimony of Julius Regenstein.)

started this art of three-color printing in this country in 1894. I supervised and criticised the work and was considered one of the foremost critics and experts on fine plate printing. Since 1905, I am actively engaged in the printing and manufacturing of envelopes, and late in 1903 and in 1904, in connection with my business as a color-printer, I manufactured and experimented in the matter of Transo envelopes.

Q. 143. Did these various businesses bring you in contact with printers and printers' art, so that you became acquainted with methods and practices of the same?

Same objection.

A. They did.

Recess.

Q. 144. In the printing of your one-piece transparent window envelopes, does the application of the border prevent the creeping or running of the oil, or simply cover up such creeping, as far as the border extends?

A. The existence of the border does not prevent the creeping, and in many cases the oil will creep over or further than the border is indicated.

Q. 145. Can you produce sheets of your paper or portions of sheets illustrating the blanks before the paper is cut to form the envelopes, which will show the printing of the tints, borders, etc., and this bleeding of the oil beyond the margin of the border, that you have mentioned? A. I can.

Q. 146. Is this sheet which you have handed me

(Testimony of Julius Regenstein.)

one such sheet as referred to in the last question and answer?   A. Yes, sir. [326]

By Mr. BANNING.—Defendant's counsel offers in evidence a portion of the sheet produced by the witness, and asks that the same be marked "Defendant's Exhibit Printed Sheet."

Direct examination closed.

Cross-examination.

(By Mr. TOWNSEND.)

XQ. 147. When you stated, Mr. Regenstein, in answer to Q. 142, that since 1905 you have been actively engaged in the printing and manufacturing of envelopes, I suppose you mean the printing and manufacturing of the Transo envelopes here in issue?

A. I do.

XQ. 148. Do you recall when you first put out an envelope commercially on the market with the printed border in the outline of a pickle, like the Heinze envelope, associated with printed matter; or any other sort of a border characteristic of a symbol of trade, like a star or anything to represent the trademark or trade name?   A. I do remember.

XQ. 149. When was that?

A. It was either in 1908 or 1909.

XQ. 150. What were the specific instances you have in mind?

A. I have in mind the envelopes on which our regular border was changed to the shape of a pickle.

XQ. 151. That is, the envelope of the present defendant?   A. Yes, sir.

XQ. 152. Have you utilized that advertising idea

(Testimony of Julius Regenstein.)

in other instances or with other firms; and if so, state those specific cases?

A. We have, either in 1909 or 1910, printed envelopes where the regular border was changed to the shape of a cigar.

XQ. 153. For whom was that work done? [327]

A. I am unable to state the name at this time; it was done for a concern in St. Louis.

XQ. 154. I show you an envelope and ask if that is the one you referred to in your last answer?

A. That is the envelope I referred to in my last answer.

XQ. 155. This envelope you looked at is one of your own envelopes, is it not? A. It is.

I offer this envelope, last referred to, in evidence, and ask that it be marked by the notary, as "Complainant's Exhibit 'E,' Stickney Cigar Envelope," for identification.

XQ. 156. Will you state why, in getting up these envelopes for the Heinz Company, represented by Complainant's Exhibit "C" and the "Stickney Company Envelope, Exhibit 'E,'" so marked for identification, just why you used the particular form or borders therein shown, and not some other shape or outline of border?

A. I presume that the respective parties had asked us whether we could change our regular border to the shape of a pickle or cigar, respectively, and we very likely told them that we could.

XQ. 157. Do you think that that was the real reason? A. I do.



(Testimony of Julius Regenstein.)

XQ. 158. Do you think that that was the only reason for making the change? I mean your only reason for making the change?

A. It was our only reason.

XQ. 159. What was the reason of your imprinting the word "Heinz" on the envelope, so that when held up to you as I am holding it up to you now, with the face of the envelope towards you, the word "Heinz" appears in association with the outline of a pickle? [328]

A. The trademark of the Heinz Company represents a pickle, which shows the word "Heinz" on the pickle. The only way Heinz would accept the envelope was to show the word "Heinz" the same as appears on the trademark. It is impractical to print the word "Heinz" on the transparency, as it would interfere with the clearness of the window, and the only way to bring it out is to print it on the inside of the bottom flap.

XQ. 160. So that, in effect, the word "Heinz" shows through the window? A. Yes.

XQ. 161. I will ask you the same question as XQ. 159, in regard to the Stickney envelope, and the reason for printing the words "Stickney's Fine Segars" on the envelope, so that it appears as if printed on the face of the envelope, associated with the outline of a cigar?

A. I do not know why Stickney had us print this label on the inside of the flap. I presume he saw that we printed the inside of the flap for Heinz and he no

(Testimony of Julius Regenstein.)

doubt wanted the same thing, since there is no special charge made.

XQ. 162. Do you know what your own reasons were for printing it so?

A. Our reason no doubt was because Stickney asked us to do it.

XQ. 163. You could just as easily have printed those words or the words "Stick to Stickneys" just above or just below the outline of the cigar on the opaque portion of the envelope, could you not?

A. We could if Stickney had asked us to.

XQ. 164. And that would probably have identified the Stickney cigar just as well as the way in which you printed it, would it not?

A. I don't know anything about that.

XQ. 165. Did you solicit this order of envelopes from the [329] Heinz company, or did it come to you voluntarily, and initiate with the Heinz company?

A. We send out a great many sample envelopes to the various concerns, and I do not remember at this time how this transaction came about.

XQ. 166. What is your best recollection as to this?

A. My best recollection is that the Heinz people asked us for prices, and asked whether we could change our usual ring to the shape of a pickle.

XQ. 167. What did you do then?

A. As I stated before, we told them that for a special consideration such change could be made.

XQ. 168. What were the circumstances in connection with the Stickney order?

(Testimony of Julius Regenstein.)

A. The Stickney order is still in my mind, as it is more recent, and I believe that our St. Louis salesman showed a Heinz envelope to Stickney, and that he suggested the changing of the regular border to a cigar. I am not positively sure of this point, as it is possible that when Stickney saw the Heinz envelope that he said to our agent to give him in place of a pickle a cigar.

XQ. 169. The last portion of your answer though, is merely a surmise?

A. Yes. I remember that the Stickney proposition was submitted to us by our agent.

XQ. 170. Are these the only two instances of advertising envelopes of this character that you have?

A. They are the only two I can remember.

XQ. 171. What has been the general comment with regard to the two envelopes—the Stickney and Heinz—as to the get up and artisticness and effectiveness? A. They are very much admired. [330]

XQ. 172. Recognized as something new?

A. Probably.

XQ. 173. Admired by the trade, or particularly by the customers?

A. To my personal knowledge, the greatest admiration came from my part. We do not care for this kind of business. It does not fit into our manner of manufacture, and is therefore not profitable.

XQ. 174. How doesn't it fit into your line of business?

A. According to the manner our paper is printed, it is necessary to remove, before such envelopes are

(Testimony of Julius Regenstein.)

printed, our regular plate, and the time consumed in making this change on our fast running machine means a great deal more to us than the additional price, and that is particularly so in the case of the Stickney cigar, where we are obliged to not only change our plates but we must also clean our press on account of the brown ink which is used, where we invariably use, with but few exceptions, nothing but green ink.

XQ. 175. Do you recall whether you submitted specimens or drawings of a proposed envelope to the Heinz Company before you got their order?

A. I do not.

XQ. 176. Prior to getting up the Heinz envelope, showing the window with the surrounding pickle outline, had you ever seen any other transparent envelope, showing or embodying the same idea?

A. I remember that either late in 1905 or 1906 a Mr. Cohn of San Francisco sent to me what I really believe were parts of an envelope, I think it was the face only, which showed in one case the design of a cigar in which the transparent window absolutely followed the shape of a cigar. I also believe that the same party submitted a part of an envelope which represented a box of cascadelets, where the window took the same shape as the box of cascadelets, but I am positive that [331] neither one of the jobs were printed on a printing-press. According to my recollection the pictures were color sketches made by artists on the paper, and the transparency was simply indicated by the use of some fat, butter, or some-



(Testimony of Julius Regenstein.)

thing similar. I received at that time a letter from Mr. Cohn, in which I think he said that he either had a patent on this design feature or had applied for a patent, and it was his idea that we ought to come together in some way in a proposition pertaining to the design feature. I remember well that I turned this matter down, and believe I told Mr. Cohn that his idea was absolutely impossible and impractical. I believe that after awhile, in some way, I got a hold of Mr. Cohn's second patent, and I saw by the patent drawing that a pickle was illustrated.

XQ. 177. The Mr. Cohn you refer to is the complainant herein, is he not? A. I believe so.

XQ. 178. And the second patent referred to is the patent No. 824,908, is it not?

A. I referred to the same patent which in my previous testimony was referred to as the second Cohn patent.

XQ. 179. In 1905 or 1906, when you received those specimens from Mr. Cohn, did you also receive a specimen from Mr. Cohn, showing the outline of a pickle or cucumber?

A. I cannot remember at this time. I can only remember the cigar and the box, but it is possible that there was a cucumber among those samples.

XQ. 180. Was that the first correspondence you ever had with Mr. Cohn with respect to the inventions and patents here in suit?

A. According to my recollection, that is the first time I [332] ever heard of Cohn.

XQ. 181. In getting up the Heinz envelope with

(Testimony of Julius Regenstein.)

the pickle outline, why didn't you adopt some other design, like that of a cascaret, or a cigar?

A. I stated in my testimony that I believe the pickle design was made and suggested by Heinz, and I hardly believe that I could put Heinz in the Cascaret business.

XQ. 182. The picture of a cascaret outline, with the name of a drug manufacturer, would not very well serve to advertise the goods or business of Heinz, would it? A. I would not think so.

XQ. 183. But such a design would be a pretty good advertisement for a cascaret company, don't you think? A. I am unable to state that.

XQ. 184. What is your belief in regard to that, in view of your experience, from the manufacture and use by your customers, the Heinz company and the Stickney company, of their envelopes?

A. In regard to the Heinz and Stickney envelopes, I wish to state that I do not remember a single instance where another customer came to us and asked us to give him something similar or something to advertise his business by the use of symbols of trade, etc.

XQ. 185. What did you mean then in answer to XQ. 171, when you said that the Stickney and Heinz envelopes are very much admired?

A. They were very much admired by myself, and the few other people who saw them, but nobody wants to buy them.

No. 2195

2

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

Transcript of Record.  
(IN THREE VOLUMES)

H. J. HEINZ COMPANY (a Corporation),  
Appellant,

vs.

MAX M. COHN,  
Appellee.

VOLUME II.  
(Pages 305 to 640, Inclusive.)

Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

FILED

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(Testimony of Julius Regenstein.)

XQ. 186. The extra price would have something to do with their popularity, would it not?

A. The extra price is very small, but I think that the main [333] reason why very few people can use the proposition is because we cannot change the shape of our transparency, and this peculiar shape can be adapted to very few articles only.

XQ. 187. Referring to the Heinz envelope, you employ, do you not, blank envelope stock suitable in strength and texture, don't you? A. I do.

XQ. 188. Is that blank stock what you call semi-transparent? A. Yes.

XQ. 189. A portion of that is, as you have stated, imprinted with a suitable opaque coloring matter to render the body of the envelope opaque?

A. Yes, sir.

XQ. 190. The remaining portion, which is to form the window, I believe you stated is treated by a preparation which has the property of rendering transparent the portion to which it is applied?

A. Yes, sir.

XQ. 191. What sort of an oil do you use in making this transparency? And by asking this question, I am not seeking to delve into your trade secrets.

A. I use an oil.

XQ. 192. What is the general character or base of the oil? A. I do not propose to tell that.

XQ. 193. This oil, I believe you have stated, in effect, is stamped or printed or otherwise applied to the blank to provide the transparency or window of the desired design; that is right, is it not?

(Testimony of Julius Regenstein.)

A. Yes, sir.

XQ. 194. And that, obviously, is applied to such part of the blank where the transparency is desired to appear on the face of the envelope, and it may cover a larger or lesser space, according to the desired size of the transparency or window. That is true, is it not?

A. Our transparency is invariably about of the same size and [334] shape.

XQ. 195. In other words, it is large enough for the name and address written on the inclosure to show through? A. Yes, sir.

XQ. 196. This "oily preparation" which you use, "has a tendency to creep or 'bleed,' " has it not, "beyond the borders of the space imprinted by the stamp or die by which it is applied"?

A. The oil creeps or bleeds more or less in excess of the size of the printing block.

XQ. 197. And the effect of such creeping or bleeding would be, would it not, to "stain or discolor the rest of the envelope or leave a ragged appearance to the window opening"? A. It would.

XQ. 198. And to obliterate such appearance of creep, and give definition to the window opening, is the reason for your placing the border or ring, as you call it, around the window, is it not? A. Yes, sir.

XQ. 199. In answer to Q. 14, you said: "In making the Transo envelope we first in one operation print the inside tint and ring." We are not to understand from that, are we, that you apply the tint and ring on the inside of the envelope?



(Testimony of Julius Regenstein.)

A. When I stated that we printed the tint and the ring in one operation, I meant by that the tint and ring are printed on a rotary press, which has two cylinders; in the same feeding, one cylinder will print the inside, and the other cylinder the ring, in the same manner as a newspaper is printed at the same time on both sides by one operation.

XQ. 200. On which side of your sheet, the tint side or the ring side, do you apply your transparency-forming oil [335] preparation?

A. On the tint side.

XQ. 201. The tint side being the inside of the finished envelope? A. Yes.

XQ. 202. So that, then, in practice, your oily preparation and colored ring "are applied on opposite sides of the blank the preparation on the inside and the coloring on the outside" by coloring meaning the ring? A. Yes.

XQ. 203. When was the first time you ever saw one of Mr. Cohn's one-piece envelopes with the border, if you ever saw one, before 1906, as you have already testified?

A. I did not see one previous to 1905 or 1906, and I believe what I saw at that time was only a part of an envelope.

XQ. 204. Was that the first time you had ever heard of the Cohn inventions?

A. According to my recollection, it was.

XQ. 205. You stated yesterday, in answer to Q. 37, that your company is manufacturing envelopes under the Reese patent 766,902, August 9, 1904.

(Testimony of Julius Regenstein.)

What envelopes did you refer to?

A. Transo envelopes.

XQ. 206. Like the Heinz envelope in suit?

A. Like the Heinz envelopes and others.

XQ. 207. I suppose you are familiar with the Reese patent, are you not?     A. I am.

XQ. 208. I show you a copy of the Reese patent, and ask you to point out, if you can, anywhere in that patent anything illustrating or describing an envelope such as is represented by the Heinz envelopes with a border of any sort, and particularly a border in the outline of a symbol of trade, which outline is or is not associated with any printed matter, or any suggestion of such construction as represented in the [336] Heinz envelope, or represented in the regular Transo Stock Envelope with a plain ring or border?

A. The Reese patent does not mention anything as to a border surrounding a transparency, nor does it refer to any border representing a symbol of trade.

XQ. 209. Then, why do you mark the Heinz envelope and the stock envelope with the date of the Reese patent, since I notice on all these envelopes the following: "Pat. Aug. 9, 1904, Transo Paper Co., Chicago"?

A. Because the Heinz and the stock envelopes are made according to the Reese patent.

XQ. 210. In what respect?

A. The Heinz and the stock envelopes are made from blanks in accordance with the patent to George Reese.

XQ. 211. So that in placing this patent date of

(Testimony of Julius Regenstein.)

Aug. 9, 1904, on your envelopes, it is simply calling attention to the fact that the original sheet from which the envelope blank was cut is patented. Is that correct?

A. The envelope blanks from which such envelopes were cut are patented by George Reese.

XQ. 212. I do not think the witness has answered my question. A. Just as I have answered.

By Mr. TOWNSEND.—The question is immaterial, as the claims of the Reese patent are the best evidence as to what the patent covers. I only wanted to know whether the witness believed that the Reese patent is on the envelope itself or on the original sheet.

XQ. 213. Referring to Mr. Banning's letter of December 16, 1903, addressed to you, and which has been read into the record, did you ever act on the suggestion of filing application for patents on the paper and on the envelopes with transparent portions? [337] A. We told Mr. Banning to proceed.

XQ. 214. What was the nature of the proceedings taken? A. To apply for a patent.

XQ. 215. How many patents?

A. I believe we spoke first of two patents, but Mr. Banning suggested afterwards that only one patent was necessary. I am not sure on this point.

By Mr. BANNING.—Defendant's counsel states that there were two applications filed, through his firm, by George Reese.

XQ. 216. What were these two applications on?

A. I believe one was on a finished transparent en-

(Testimony of Julius Regenstein.)

velope made of one piece of paper; and the other one on the preparation of the blanks from which such one-piece transparent envelopes were to be made.

By Mr. BANNING.—Defendant's counsel states that he has present a certified copy of the Reese application that never resulted in a patent, and that complainant's counsel is at liberty to examine it and make any use of it, in questioning the witness or otherwise, that he may desire.

By Mr. TOWNSEND.—The certified copy referred to by Mr. Banning appears to be that of an abandoned application of George Reese, filed January 15, 1904, Serial No. 189,191, for improvements in Envelopes and Blanks Therefor, assigned one-half to Julius Regenstein, of Chicago, Illinois. This application appears to have been rejected on certain prior patents.

XQ. 217. I show you the copy just referred to, and ask if you are familiar with the descriptive matter, meaning the specification and drawings of the invention, and if you understand the same?

A. I believe I understand this patent. [338]

Adjourned until Saturday, December 3, 1910, ten o'clock A. M.

Chicago, Illinois, December 3, 1910.

Parties met pursuant to adjournment. Present as before.

By the WITNESS.—I wish to make the statement that in my yesterday's testimony I made a mistake in claiming that the Osborne company became a part of the American Colortype Company in 1901. I in-



(Testimony of Julius Regenstein.)

tended to say 1902—March, 1902.

XQ. 218. Referring to this copy of abandoned application, I ask you, Mr. Regenstein, if you find illustrated or described therein any envelope with a border similar to or for the purpose of the ring which you use on your stock envelope or on the Heinz envelope? A. I do not.

XQ. 219. Is there any suggestion of such a construction? A. No.

XQ. 220. The other application of George Reese, which you have referred to and which you say was filed at the same time that this abandoned application was, I presume is the so-called Reese patent, or resulted in the so-called Reese patent of August 9, 1904? A. Yes.

XQ. 221. Both of those applications were filed on January 15th, 1904, is that correct? A. Yes.

XQ. 222. You stated yesterday that you or Mr. Reese, or the two of you together, got up your green border envelope, which you have introduced in evidence as "Defendant's Exhibit January, 1904, Envelope No. 2," in the early part of January, 1904. Will you please state why, in filing these applications, you made no mention in either of them of the use, or desirability of the use, of such a border in getting up a transparent envelope? [339]

A. In November or early in December, 1903, Mr. Reese and I submitted to Mr. Banning an envelope without a border. After we found out from Mr. Banning, either by letter or verbally, that there was a chance of getting a patent, Mr. Reese and I, with

(Testimony of Julius Regenstein.)

the help of our printers, went to work to make transparent envelopes. The reason why I did not mention or speak of the border was on account of the fact that I supposed it was impossible to get a patent on such a simple operation of covering creeping or bleeding by ink—the operation which was performed by me during the many years of my experience and activity in business.

XQ. 223. In other words, you did not consider the border of sufficient importance to make any mention of it in the application or applications which you filed?

A. I did not think it was possible to get a patent on an operation of this kind.

XQ. 224. And for that reason you didn't make any mention of it, or describe it, or claim it, or illustrate it, in either of those applications?

A. I did not pay any attention to the matter whatsoever.

XQ. 225. Will you just describe the exact process, or the method followed, in rendering transparent this envelope with a green border, being the old envelope No. 2, "Defendant's Exhibit of January, 1904," and the imprinting of the border around the window?

A. I gave the pressman of a universal press the sheet of paper and a printing block the shape of the window, and put some oil into the fountain. I asked him to make an impression, and the consequence was the sheet of paper with a transparent part or window. As he handed me the sheet, I noticed at once that the

(Testimony of Julius Regenstein.)

job was imperfect and that the oil which I used ran further than the size of the printing block. I at once decided [340] on printing opaque ink over this imperfection, sent for an engraver, and instructed him to make a border of the size I have before me, of this envelope No. 2. This plate was made very quickly—probably in the course of two hours. I then asked the same pressman to print this plate on the space which I indicated to cover the bleeding. We tried at that time a number of different shades, and after we found that the spreading would show through borders printed with colors being partly made of aniline matters I decided the proper thing to use would be an opaque or covering ink. We had also tried at that time a great many different solutions of oil, as we would have preferred an envelope which would appear clean, but it was impossible for us to find an oil which did not bleed at all. The particular reason for doing away with the border at that time was to do away with this operation of printing, which is rather costly.

XQ. 226. So that, except for the tint that you put on the inside of your stock envelopes and such as is shown on the inside of the Heinz envelopes, the process of making this old January, 1904, No. 2 envelope is substantially the same followed in making your stock and Heinz envelopes to-day. Is that right?

A. With the exception that to-day we print the ring before we apply the oil, and to do the ring printing in place of using a universal press we use a rotary press. The oil was applied at that time on a uni-

(Testimony of Julius Regenstein.)

versal press, and a stock envelope to-day is printed on a cylinder press. At the time the No. 2 envelope was made we prepared only one envelope in one operation. Now in one operation we print twenty-four.

XQ. 227. You had made this envelope and developed this border idea, shown in this old envelope No. 2, before you filed the Reese application referred to, is that right? [341]

A. We made this envelope early in January, 1904.

XQ. 228. Did you ever file any application for patent, in this or any other country, for transparent one-piece envelopes with a border?

A. I did not.

XQ. 229. Did Mr. Reese, or any of your associates, or employees, file such an application, for themselves or for your benefit? A. Not to my knowledge.

XQ. 230. So that you never made any attempt to protect this envelope with a border, by filing any application for a patent, or seeking to obtain patent protection of any sort?

A. I never paid any attention to the border.

XQ. 231. Did you or Mr. Reese ever file any other applications for envelopes showing a transparent window, of any sort, in this or any other country?

A. I do not remember that an application was filed. I remember we spoke at once time with Mr. Banning in regard to a patent for a transparent pay envelope, but I believe I am correct that the matter was dropped.

XQ. 232. Do you recall filing any foreign application for either of the devices shown in the so-called



(Testimony of Julius Regenstein.)

abandoned application for envelopes, or according to the Reese patent of August 9, 1904?

A. I do not remember at this time as to the application in question, but I do know that we filed patents and received patents in England, France, and Canada on the Reese patent.

XQ. 233. By Reese patent, you mean the Reese patent of August 9, 1904, about which you have been talking? A. Yes, sir.

XQ. 234. When did you apply for those patents in Canada, France and Great Britain?

A. I am unable to give the dates without consulting the patent [342] papers.

XQ. 235. Can you state the year in which these foreign patents or any of them were applied for?

A. I presume it was in 1904.

XQ. 236. In the early part or the latter part of 1904?

A. I can give you definite information after I consult the patent papers.

XQ. 237. Can't you approximate the month in which any one of these applications for foreign patents was filed? A. I cannot.

XQ. 238. Can you approximate the date of any one of these patents? A. I cannot.

XQ. 239. Can you state whether any one of those patents was filed before or after you got the U. S. Reese patent of August 9, 1904?

A. I am unable to state whether the patents were applied for previous to or after August 9, 1904.

XQ. 240. Does that answer apply specifically to

(Testimony of Julius Regenstein.)

the Reese patent? In other words, are you unable to state whether you applied for the British patent before or after August 9, 1904?

A. I am speaking of the Reese patent. I am unable to state.

XQ. 241. Do you know whether or not any of those foreign patents discloses or describes the envelope with the border? A. They did not.

XQ. 242. Are you manufacturing under any of those foreign patents to-day?

A. We are manufacturing in the United States only.

XQ. 243. Did you ever manufacture in any of those countries under any of those patents?

A. We have never manufactured in any country but the United [343] States.

XQ. 244. Do you manufacture here in the United States these envelopes for use in any of those foreign countries? A. We do.

XQ. 245. I show you an envelope, Mr. Regenstein, and ask if you know what it is, and, if so, explain the same?

A. This envelope, which you hand me, was manufactured by us in Chicago. and is imprinted in accordance with the wish of our customer as follows: "Cardinal" Series Patented in Great Britain, No. 28,592. This imprint is on the back of the envelope.

XQ. 246. What does the number 28,592 signify?

A. It is the number of the British patent.

XQ. 247. Do you know what year that was?

A. I think 1904.

(Testimony of Julius Regenstein.)

XQ. 248. So this imprint signifies the British patent No. 28,592 of 1904? A. I think of 1904.

XQ. 249. Will you give the date and number and date of application of your Canadian patent?

A. My attorney, Mr. Banning, no doubt can give you that information.

By Mr. BANNING.—On reference to our docket, it appears that George Reese filed an application in Canada December 16, 1904, for a patent on "Paper for Making Envelopes," and that a Canadian patent No. 92,373 was issued to him March 28, 1905.

XQ. 250. Those foreign patents, and the American patent of August 9, 1904, were all identical, were they not?

A. To the best of my knowledge, they were.

By Mr. TOWNSEND.—I will ask that the notary mark the envelope bearing the British imprint, last referred to, as "Complainant's Exhibit 'F' for Identification." This envelope [344] bearing a return address on the face as follows: "From Samuel Jones & Co., London. Makers of Patent Non-curling Gummed Papers," and postmarked London, Jul. 29, '10, and having a canceled one penny stamp.

XQ. 251. When, in your experience, Mr. Regenstein, did it first become known to you that oil or grease on semi-transparent paper would make the spot, on which the grease or oil was placed, transparent? And, in making your answer, I would have you take into consideration your experience as an old printer.

A. I knew that oil would make the paper trans-

(Testimony of Julius Regenstein.)

parent, as long as I can remember.

XQ. 252. You knew that before you took the matter up with Mr. Banning in 1903 and 1904, and before you filed these two applications referred to; is that right?

A. I knew that, although I am not the inventor of the Transo envelope.

XQ. 253. The fact, though, that oil would make paper transparent was of itself notoriously old in the printing art long before that time, wasn't it?

A. I do not think that the making of paper transparent has anything to do with the printing art.

XQ. 254. What was the general knowledge, say, among printers, as to the effect of oil on paper?

A. I do not know, as I never saw one make paper transparent until Mr. Reese, in 1903, made his first tests on a piece of paper.

XQ. 255. Do you mean to say that that was the first time you ever saw a piece of paper made transparent by means of oil, because I understood you to say, in answer to XQ. 251, that you had known that oil would make paper transparent as long as you can remember? [345]

A. That is the first time I ever saw paper made transparent for any practical or commercial purpose. I know since I am a boy that if butter or fat was laid on paper that the paper becomes transparent.

XQ. 256. I understood you to say yesterday that you had spoiled probably fifty millions of envelopes in trying to get a good transparency. During this same period, will you state approximately the num-



(Testimony of Julius Regenstein.)

ber of good envelopes you have got out and marketed?

By Mr. BANNING.—Defendant's counsel objects to any inquiry at this stage of the proceedings looking to the ascertaining of the extent of the business of the witness or the Transo Paper Company, not only on the ground that they are not parties to this suit, which is against the Heinz Company, but also on the ground that the complainant is not entitled to any disclosure at the present time, even of the number of envelopes that have been used by the defendant, much less the number that have been made or used by other parties.

A. I prefer not to answer this question.

XQ. 257. The question was not propounded with the idea of prying into the witness' business, but merely to learn his opinion, based on facts within his knowledge, as to the popularity and success of the Transo envelope; and if the witness feels he can answer that question candidly and without giving specific figures, I will ask him to do so.

A. The Transo envelope is a popular envelope.

XQ. 258. Is it not a fact, and I believe you so stated, that until you put out your Transo envelope, with the border and all complete, and as far as your knowledge is concerned, there was not and never had been a successful one-piece window envelope on the market? [346]

A. I stated that I had never seen a one-piece envelope made in the United States, except my own.

XQ. 259. And your experience I presume has been

(Testimony of Julius Regenstein.)

such that you would have known if there were any such envelopes on the market?

A. I believe that is correct.

XQ. 260. How important or essential is the ring around the transparency in the Transo envelope?

A. The ring on a Transo envelope adds in every way to the clean and perfect appearance of the envelope.

XQ. 261. Has appearance anything to do with the practicability or commercial success of the envelope and of such an article as an envelope?

A. The appearance of the envelope is better with a ring, but does not add anything whatsoever to its usefulness; and I would consider the ring to a great extent an ornamental and artistic feature.

XQ. 262. By the usefulness of the envelope, you mean that the envelope will hold an inclosure and also allow the address to show through the window as well without the ring as with it; is that right?

A. The envelope would perform the duties for which it is intended, as well without the ring as with it.

XQ. 263. My previous question as to appearance was directed more particularly as to what effect the appearance had on the success and popularity of the envelope?

A. A clean and artistic looking envelope will always sell more readily than an article which is less clean and artistic.

XQ. 264. In other words, the clean and artistic appearance of the envelope adds to its merchantable-

(Testimony of Julius Regenstein.)

ness; is that right? A. That is correct.

XQ. 265. Do you put out any envelopes without the ring or border? A. We do not. [347]

XQ. 266. You referred yesterday to some correspondence carried on with Mr. Cohn in regard to these inventions here involved, during 1905 or 1906. Can you any more definitely locate now the time when you first heard from Mr. Cohn, in regard to these matters, or heard of Mr. Cohn? A. I cannot.

XQ. 267. The San Francisco fire and earthquake was in April, 1906. If that incident is sufficiently impressed on your mind, can you state whether it was before or after the earthquake when you first heard from Mr. Cohn, or received those specimens or parts of envelopes which you previously referred to?

A. I cannot connect Mr. Cohn's correspondence with the earthquake, but I believe that the letter was received either in 1905 or early in 1906. I have searched for this letter but am unable to find it. I presume it being a matter not affecting the sales department that Mr. Reese must have handled this letter and samples separately.

XQ. 268. Have you preserved any copy or copies of a letter or letters which you wrote to Mr. Cohn at that time, in regard to the proposition?

A. Our copies are made on a loose sheet, and I should say that the copy was kept with the original letter. I have looked for the copy and cannot find any trace whatever.

XQ. 269. You therefore cannot produce either the original letters or copies of your replies?

(Testimony of Julius Regenstein.)

A. I cannot.

XQ. 270. Referring to "Defendant's Exhibit Printed Sheet," showing imperfect work and over-creep of the oil, I will ask you if that is a fair or average specimen of all your work done? [348]

A. It is not an average specimen.

XQ. 271. Can you produce a sheet which gives a fair or average specimen of your work?

A. I have here a sheet which is an average specimen, with the exception of two oil spots appearing in the margin of the paper, which appear on account of careless handling of the sheet by the witness.

By Mr. TOWNSEND.—I will ask the notary to mark the sheet last referred to and handled by the witness, as "Complainant's Exhibit 'G' for Identification."

XQ. 272. Without waiving the previous objections entered to the receipt in evidence of "Defendant's Exhibit Osborne Art Catalogue for 1900," I wish you would pick out in that book, from the printed pictures you referred to, showing the use of a border around the pictures, that picture which to your mind best illustrates the idea or use of a border.

A. I have selected one. It is No. 4453, on page 38, and is entitled "When the Frost is on the Pumpkin and the Fodder's in the Shock," being the calendar of the Continental Building & Loan Association.

XQ. 273. How many colors is that picture printed in?

A. The picture is printed in three colors, and a



(Testimony of Julius Regenstein.)

green olive tint is added at the border or background.

XQ. 274. What are the three colors employed in the picture itself?     A. Yellow, red and blue.

XQ. 275. The picture on page 41, numbered 6104, "Playing Hookey," and immediately opposite the Continental Building & Loan Calendar just referred to, is printed in how many colors, Mr. Regenstein?

A. Three colors.

XQ. 276. And what are they?

A. Yellow, red and blue.

XQ. 277. Has this "Playing Hookey" picture any border? [349]     A. It has not.

XQ. 278. On page 43 following is picture 4202 of "A Florentine Girl." In how many colors is that picture printed?     A. Yellow, red and blue.

XQ. 279. Has that picture a border?

A. It has a gold border.

XQ. 280. Has it a border for the same purpose, in your opinion, that your window envelope has a ring or border?

A. In one sense it has. The green ring on the envelope is ornamental; so is the gold border around this picture ornamental; but it has not served its full purpose, since the careless cutting of the gold plate has diminished the proper effect showing the out of register of three-color printing and a white space which would have been covered if the border was made properly.

XQ. 281. On page 54, the picture of a soldier and a girl in the foreground and of marching troops in the

(Testimony of Julius Regenstein.)

rear, in a gold frame, illustrates, does it not, another instance of imperfect register that you have spoken of?     A. It does.

XQ. 282. The same is also true, is it not, of the gold frame shown on page 59?

A. Poor coloring and poor registering.

XQ. 283. And also on page 61?

A. The pictures are particularly poor in the cutting of the plates, but good in registering.

XQ. 284. All these instances of pictures set in gold frames show that the printing plates forming the pictures have not been cut to fit their respective frames.

A. In a way, this statement is correct.

XQ. 285. This loose sheet, 4564, "Off for the Front," is the same picture, is it not, without the gold frame, as shown on [350] page 54, of the "Soldier and the Girl," just referred to?

A. The plates are made from the same original, but of smaller size.

XQ. 286. This smaller plate, 4564, does not show any border, does it?     A. It has no border.

Adjourned until Monday, December 5, 1910, ten o'clock, A. M.

Chicago, Illinois, December 6, 1910.

Parties met pursuant to adjournment. Present as before.

XQ. 287. Have you ever put out any Transo envelopes commercially without a ring or border?

A. I have not.

XQ. 288. Have you ceased manufacturing Transo

(Testimony of Julius Regenstein.)

envelopes with a transparent window or ring or border, since the beginning of this suit?

A. I have not.

XQ. 289. You are still actively seeking new business for these envelopes? A. I am.

XQ. 290. When did the actual existence of the two Cohn patents here in suit become first known to you?

A. I first found out about Mr. Cohn when he sent me in either 1905 or 1906 a letter with samples or sketches pertaining to a picture of a cigar and a box of cascadecs.

XQ. 291. Had the patents been issued at that time, because I am inquiring now more particularly when you first heard of or otherwise became acquainted with the existence of the patents themselves?

A. I can't state when I first heard of or became acquainted with the existence of the patents. It was probably in 1907 or 1908.

XQ. 292. That you first heard of either of the patents?

A. That I first heard of either of the patents.

XQ. 293. Will you please take the specimen of the Heinz [351] envelope, which is a duplicate of "Complainant's Exhibit 'C,'" and I will ask you (reading from the claim of the first Cohn patent 835,850) if that Heinz envelope is not obviously an envelope with an unpunctured face of relatively opaque stock? A. It is.

XQ. 294. And that the Heinz "envelope face has a portion to which a preparation has been applied to render such portion transparent"? That is true, is

(Testimony of Julius Regenstein.)

it not? A. That is true.

XQ. 295. And that said Heinz envelope has "a colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock." That is also true, is it not, Mr. Regenstein?

A. Said envelope has a colored border printed around the transparency, in order to beautify the envelope and cover the creeping of the oil.

XQ. 296. I believe you gave the following as the real reason for the use of a border in three-color work: Imperfect registration; varying size of plates; poor feeding to the printing press; and changing in size of the paper on account of atmospheric conditions. That is a correct statement, is it not?

A. It is to a degree. I have also mentioned in my testimony that the borders are printed to complete and beautify the jobs and when such borders are made or engraved that the band or border is deliberately made wider or broader to cover such imperfections.

XQ. 297. Referring to the "Osborne Art Calendar," I call your attention to plate 6732 "Comrades," on part of the page which I have marked page 100, and opposite page 101, and will ask you what the border is for, shown as a black line which I [352] have marked A?

A. This is not a border; this is simply a plain black line, which is in the original half-tone plate. Lines of this sort are as a rule put around a half-tone plate



(Testimony of Julius Regenstein.)

to add to the printing qualities of the plate.

XQ. 298. On page 98, what sort of a plate is 6724, "Little Beggars"? Is not that a half-tone plate?

A. It is.

XQ. 299. That does not appear to have any border line around it, like in plate 6732 last referred to, has it? A. It has not.

XQ. 300. The same is true, practically, is it not, of the half-tone shown on pages 95, 96, 97, 98, 101?

A. Some of the plates in question have no line around them, and some on page 101 have a line.

XQ. 301. What plates on page 101 do you refer to?

A. No. 1273 and 1293. This matter of lines is of little importance, as at times they are not made well and appear broken when printed.

XQ. 302. In determining the existence of these border lines, around these two plates on page 101, you had recourse to the use of a microscope, did you not, in making your selection and distinction?

A. I did. The lines are not printed on account of any ornamental feature. They are simply used to help the printing quality of the plates.

XQ. 303. So that, as far as this line *a* of the plates on pages 100 and 101 is concerned, it bears no analogy to the printing of the ring or border around the Transo envelopes? A. None whatsoever.

XQ. 304. That answer would be equally applicable, would it [353] not, to the presence or use of the embossed border around the picture of Abraham Lincoln, plate 1284, on page 101?

A. The embossed border put around this calendar

(Testimony of Julius Regenstein.)

was to beautify the same and get more money for the same.

XQ. 305. That is true also, is it not, of the frame around the picture on page 26, entitled "On a Point"? A. It is true.

XQ. 306. Isn't that also true of the gold bordered band around the picture of the "Florentine Girl," plate 4202, on page 43?

A. That is true, with the exception that in this instance the engraver should have made his gold plate large enough to cover the imperfections in printing and the poor cutting of the three-color plates.

XQ. 307. The exception, though, indicates the thing he didn't do, doesn't it? That is, this gold border in the Florentine picture does not cover up the so-called imperfections?

A. It does not properly cover the so-called imperfections.

#### Redirect Examination.

(By Mr. BANNING.)

RDQ. 308. I will ask you to look at the certified copy of this abandoned Reese application, filed January 15, 1904, and to state what the date of the signing of such application by Reese appears to be.

A. "Signed at Chicago, in the County of Cook, and State of Illinois, this second day of January, 1904."

RDQ. 309. In giving your last answer, you read from the certified copy of the petition of such application, I believe?

That is objected to, as the paper is the best evidence of its contents.

(Testimony of Julius Regenstein.)

A. I did.

RDQ. 310. I show you the oath in this certified copy of the [354] Reese abandoned application, and ask you to read into your answer the jurat, or statement by the notary.

Same objection; but I would say that I have no objection of counsel introducing the entire paper in evidence.

By Mr. BANNING.—Defendant's counsel states that all he desires is to show the date when the petition and oath were signed and made, and that he has no desire to cumber the record by introducing the entire certified copy; but that if complainant's counsel desires to produce it as an exhibit on the part of complainant he is at liberty to do so. Furthermore, counsel calls attention to the fact that a number of questions have been asked as to what this certified copy showed or did not show, so that he submits that the question is proper for the purpose for which it is asked, and is in accordance with the precedents set by counsel himself.

By Mr. TOWNSEND.—Acting on the suggestion of counsel for defendant, counsel for complainant offers in evidence the certified copy of the abandoned application referred to, and asks that it be marked "Complainant's Exhibit 'H' for Identification." The objection to the last two questions are therefore withdrawn, on the grounds stated; but objection is entered on the grounds that the questions are immaterial and incompetent.

A. "Sworn to and subscribed before me this second

(Testimony of Julius Regenstein.)

day of January, A. D., 1904. Oscar W. Bond, Notary Public, (Notarial Seal)."

RDQ. 311. I believe, in answer to some of the questions asked on cross-examination, you stated something about the undesirability of making special designs, such, for instance, as that on the envelope showing a border in the form of a cigar, for Stickney & Company, as a reason why you did not specially care for that kind of work. Please state a little [355] more fully in reference to this.

A. I stated that we did not care much for special work of this sort, since the changing of the form from regular ring plates to, for instance, cigar plates, occupies considerable time. This work is done on a rotary machine, which has a daily output of forty thousand sheets 29x54 inches. The changing of such plates will occupy at times three and four hours, and, therefore, will cut our daily output down very considerably. In fact, this loss, on account of stopping the machine and changing the plates, is much greater than the extra money we can get for envelopes with special borders. If we would ask what they are really worth, the envelopes would be uncommercial, as no one would be willing to pay such prices.

By Mr. TOWNSEND.—I move to strike out the last sentence beginning, "If we would ask," etc., as not being responsive to the question and as being the mere statement of the witness, and inconsistent with the acts of the witness and his company.

RDQ. 312. As I recall, there was some strike or difficulty some years ago, here in Chicago, with the



(Testimony of Julius Regenstein.)

Franklin Union No. 4, if I have the name right. Do you recall any difficulty at that time?

Objected to as leading, and as irrelevant and immaterial.

A. I recall the facts, that the company with which I was connected, called the "American Colortype Company," was in trouble with the Franklin Union; a strike was declared at our shop along in March, 1904, and we had considerable trouble; our men were sluggish and injured to a great extent, and we were obliged, in April, 1904, to go before the United States Courts and ask for an injunction to restrain the [356] Franklin Union and others from interfering with our business and our health.

By Mr. BANNING.—Defendant's counsel states that he has procured a certified copy of the injunction or restraining order referred to by the witness to definitely fix the date of the same, and that for that purpose he offers the certified copy referred to, in evidence, and that the same shows it was entered April 4, 1904. He asks that the copy be marked "Defendant's Exhibit Strike Restraining Order, April 4, 1904."

By Mr. TOWNSEND.—The receipt in evidence of the exhibit last referred to is objected to as irrelevant and immaterial to any of the issues in the present case.

By Mr. BANNING.—For convenience, it is agreed that a copy of the restraining order may be made by the notary, and inserted to follow this deposition, in place of the original.

(Testimony of Julius Regenstein.)

Recross-examination.

(By Mr. TOWNSEND.)

RXQ. 313. I show you a letter, Mr. Regenstein, on the Transo Paper Company's letter-head, dated September 22, 1910, and addressed to "Gabriel Meyerfeld Co., 311 Battery St., San Francisco, Calif.," and ask if you know the signature to that letter?

A. I do.

RXQ. 314. Whose signature is it?

A. The letter is signed by Mr. Horace Anderton.

RXQ. 315. Who is Mr. Anderton?

A. He is an employee of our company.

RXQ. 315. That is on your regular letter-head, is it not? A. It is.

RXQ. 316. And that letter was written and signed by Mr. Anderton on behalf of the company, was it not? [357] A. It was.

By Mr. TOWNSEND.—I will ask the notary to please mark the letter as "Complainant's Exhibit 'I' for Identification."

Redirect Examination.

(By Mr. BANNING.)

RDQ. 317. Mr. Regenstein, I will ask you to read the letter into this answer to the question about which complainant's counsel has inquired in the last two questions:

A. The letter reads as follows:

(Testimony of Julius Regenstein.)

**[Complainant's Exhibit "I" for Identification.]**

**"TRANSO PAPER COMPANY.**

Chicago, Illinois, Sept. 22, 1910.

Gabriel Meyerfeld Co.,

311 Battery St.,

San Francisco, Calif.

Dear Sirs:—

We have your favor of the 14th inst., referring to notice received from Max M. Cohn with reference to suit pending against H. J. Heinz Co., as users of Transo Envelopes.

This party holds a worthless patent, which he has tried to compel us to buy, but for which we have no use. We are fighting the case for H. J. Heinz Co., and there is no doubt but what we will be able to prove our contention in the matter. In the meantime, you are perfectly safe in continuing to use our envelope, as we will protect you against any possible action on the part of Cohn.

We are sending you a further letter to this effect today from our patent attorneys, Messrs. Banning & Banning.

Yours very truly,

TRANSO PAPER CO.

Per HORACE ANDERTON." [358]

HA. ER.

RDQ. 318. I infer from this letter that Gabriel Meyerfeld Co. had written to your company in reference to notice received from Mr. Cohn about the pendency of this suit. Is that the case?

A. I presume that is the case.

(Testimony of Julius Regenstein.)

RDQ. 319. Please state the fact, whatever it may be, as to whether many of your customers have received notices or letters from Mr. Cohn, threatening suits under the patent sued on herein, if you know.

A. I believe that a great bulk of our customers have received such notices as you mentioned, which have the appearance of an official document, with a large headline of warning, and this circular caused a great many customers to write us letters to the effect saying that they were warned by the Circuit Court of California to discontinue the use of the Transo envelopes.

RDQ. 320. Do you mean that the form and style of the notice was such as to be calculated to create the impression that it emanated from the Court?

By Mr. TOWNSEND.—The question is objected to as calling for the opinion of the witness, being hearsay, and that the circular itself is the best evidence of its contents. Counsel for complainant has a copy of said notice or circular, and if counsel for defendant wishes to use it or introduce it in evidence he is welcome to it.

A. It was.

RDQ. 321. I show you this "Warning" which complainant's counsel has just handed me, in accordance with his suggestion above, and ask you whether it is like the "warnings" that have been sent to you from your customers as having been received by them?

A. It is the same. [359]

RDQ. 322. You may state, generally, about how many of your customers have written you that they



(Testimony of Julius Regenstein.)

have received notices or warnings from Mr. Cohn.

A. Our office has received at least three hundred, and our branch offices are reporting that they have also received a great many.

RDQ. 323. Do you know how Mr. Cohn got the names and addresses of your customers, to send them these notices or warnings? A. I do not know.

RDQ. 324. I notice this letter to the Gabriel Meyerfeld Co., in speaking of Cohn says: "This party holds a worthless patent." Was that statement an expression of your honest opinion as to the Cohn patent?

A. Regardless of this letter, which is not signed by me personally, I say that I consider the Cohn patent worthless.

RDQ. 325. If you see any further or other statements in this letter about which you may desire to make any comment, please do so.

A. In this letter appears the statement: "which he has tried to compel us to buy." I should say that this statement is not absolutely correct, since Mr. Cohn at no time has tried to "compel" us to buy his patents. The writer and signer of this letter does know I believe that in 1909, or about that time, a Mr. Callahan wrote us a letter, from some part of California, in which he claimed that he had an option on the Cohn patents and offered the same to us for sale.

RDQ. 326. Did you at the time have knowledge of the letter from Mr. Callahan? A. I did.

RDQ. 327. Do you remember Callahan's full

(Testimony of Julius Regenstein.)

name? A. I do not.

RDQ. 328. Do you know whether that letter from Callahan is [360] still in existence?

A. I came across a letter from Callahan the other day in looking over my private papers, but I do not know at this time whether this letter is the letter in which he made this offer or whether it is a subsequent letter.

By Mr. BANNING.—Defendant's counsel offers in evidence the warning notice referred to in the above questions and answers, and asks that the same be marked "Defendant's Exhibit Cohn Warning."

Recross-examination.

(By Mr. TOWNSEND.)

RXQ. 329. In the letter of Gabriel Meyerfeld Co. to you, and to which your letter of September 22, 1910, Complainant's Exhibit "1" for Identification, is an answer, did the letter say that they had been warned by the Circuit Court of California to discontinue the use of Transo envelopes?

A. I suppose that letter is in our files. I have never seen the letter, and therefore do not know to what this letter refers.

RXQ. 330. Did you send such a letter as this, Complainant's Exhibit "1" for Identification, to all of your customers who complained that they had received these warning notices, or is this the only letter of this sort that you have written in such cases?

A. We send out all kinds of letters.

RXQ. 331. What do you mean by that, as your

(Testimony of Julius Regenstein.)

answer does not seem to be in response to my question?

A. I mean by that that we have no special form—that we send out all kinds of letters.

RXQ. 332. I was not thinking so much of the form as of the substance, and I will ask you if you have written all these various complaining customers, or any substantial number of [361] them, to the effect that the Cohn patent was worthless; that Cohn had tried to sell you the patent; that you had no use for the same; and that they—the customers—would be perfectly safe in continuing to use Transo envelopes; and that you would protect them against any possible action on the part of Mr. Cohn?

A. I am unable to tell you just what we said in the various great many letters, but I feel satisfied that we said enough.

RXQ. 333. In answer to RDQ. 324, you said that, regardless of the letter to Gabriel Meyerfeld Co., you “consider the Cohn patent worthless.” Which patent do you refer to; or do you include both of the patents in suit in the estimate which you have made?

A. In the first place, I said in my answer distinctly patents, and I consider both of them worthless.

RXQ. 334. Who is this man Callahan, that you have referred to as trying, in 1909, to sell you the Cohn patents?

A. I believe I met him several years ago in Chicago.

RXQ. 335. Is it the same Callahan referred to in the letter of Messrs. Banning & Banning of December

(Testimony of Julius Regenstein.)

16, 1903, and as having a patent dated June 10, 1902?

A. It is not. He is the brother of the said Callahan.

Chicago, Illinois, December 7, 1910.

Redirect Examination.

(By Mr. BANNING.)

RDQ. 336. Since the last question was asked you, your deposition was interrupted to permit the examination of the witnesses, Sauerman, Wein, and Olson, I believe? A. Yes, sir.

RDQ. 337. Referring to the "Defendant's Exhibit Cohn Warning," please state whether duplicates of such warning have been [362] sent you by any of your customers. A. A great many.

RDQ. 338. If you have here present any letter received by your company from a customer, referring to the receipt of such a warning notice, I will ask you to produce it and read it into your answer.

A. I have in my hand a letter received by the Transo Paper Company, from Palm Bros. & Company, Cincinnati, Ohio, dated September 10, 1910, which reads as follows (omitting the printed heading):

**[Defendant's Exhibit Palm Bros. Letter (Offered).]**

"Cincinnati, O., U. S. A., Sept. 10, '10.

Transo Paper Co.,

Chicago, Ill.

Gentlemen:—

We are in receipt of a notice from San Francisco, signed by Max M. Cohn, which purports to be a notice from United States Circuit Court in and for



(Testimony of Julius Regenstein.)

the Northern District of California, and this is a notice of suit entered by Max M. Cohn, plaintiff, v. H. J. Heinz Co., respondent. This suit is for an infringement by the respondent of letters patent on envelopes, which the plaintiff claimed were used illegally by the respondent. These envelopes were supposed to be manufactured and sold by your company. This notice also states that everyone who makes, sells, or uses a similar device is liable to suit for damage. We have been using envelopes manufactured by your company, but in view of having received this notice we have discontinued their use. We will be pleased to hear from you as to the meaning of this notice. We have quite a quantity of your envelopes on hand and have found them very satisfactory, but we do not wish to render ourselves liable to damages for using them. [363]

Yours very truly,

THE PALM BROTHERS COMPANY,

GL/BK.

Per GEO. G. LUDWIG."

By Mr. BANNING.—Defendant's counsel offers in evidence the letter produced by the witness and read above, and asks to have the same marked "Defendant's Exhibit Palm Brothers' Letter."

RDQ. 339. You may state what the fact may be as to the effect upon your customers and your business, the sending out of these Cohn warnings by the complainant has had.

The question is objected to as irrelevant and immaterial; as any effect that such notice may have had, favorably or unfavorably to the witness, would be

• no defense.

(Testimony of Julius Regenstein.)

A. It is very difficult for me to state the extent of our damages. I know of a number of instances where we have lost large customers and smaller ones, and no doubt a great many customers, probably all of our customers, have received the Cohn warning notices, and in a great many instances the same were not returned to us, and we find since we miss a great many re-orders that our customers must have bought other goods. A great number of our customers continue to do business with us, and in many instances they claim that they did not propose to be bluffed by a shady proposition of this sort.

RDQ. 340. From your knowledge of Mr. Cohn's business, what do you say as to his being in a position to furnish the envelopes to your customers, which he has thus scared away?

Objected to as irrelevant and immaterial; and calling for the self-serving opinion of the witness, and in any event the information that may be elicited by the question is no defense.

A. According to my knowledge, Cohn is not in a position to [364] make or furnish one-piece transparent envelopes; nor have I ever seen a one-piece envelope made or put on the market by Mr. Cohn. I dare say, if such envelopes made by Mr. Cohn were on the market, I dare say that on account of the numerous connections I have some one connected with our business would have seen same and submit it to me.

RDQ. 341. I believe you were asked on cross-examination as to whether or not your Transo envelopes

(Testimony of Julius Regenstein.)

had the oil applied on one side of the paper and the border applied on the other side. How was it with these old January, 1904, envelopes in evidence?

A. Our 1904 experiments stood for an envelope where the ink representing the border was printed on the same side where the oil was put.

RDQ. 342. And that is true of these January, 1904, envelopes in evidence, is it? A. It is.

RDQ. 343. Are the witnesses, Sauerman, Wein, and Olson, who have given their depositions for the defendant, stockholders in the Transo company, or financially interested in the outcome of this litigation?

A. The witnesses in question are in no way financially interested in the business of the Transo Paper Company.

RDQ. 344. Is the Transo Paper Company engaged exclusively in the manufacture and sale of these Transo envelopes? A. Yes, exclusively.

RDQ. 345. About how many hands or employees does the company have, engaged in the work of making and selling these Transo envelopes?

A. About 120.

RDQ. 346. About what investment does your company have in its plant, machinery, stock, etc., for the carrying on of the [365] business of manufacturing and selling these Transo envelopes?

A. Our entire investment is about \$150,000.00.

RDQ. 347. To what extent is your own personal time devoted to the business; and, in answering, you may cover the time since you began work with Mr.

(Testimony of Julius Regenstein.)

Reese to the present time?

A. For one year I was connected with the American Colortype Company, but the last six years, ending February, 1911, I gave almost exclusively to the promotion of the Transo envelope.

RDQ. 348. Referring again to these old 1904 envelopes in evidence, I will ask you to state why you preserved them, and how you are able to know that these envelopes in evidence are some that you preserved?

A. I preserved said envelopes because they were the first attempt I made. I wanted to keep them and kept them at home to have them before me, as I generally do with all things which I put out or help put out.

RDQ. 349. Until you brought them to our office for use as evidence in this case, in whose possession have they been since they were made?

A. They were in my exclusive possession.

Recross-examination.

(By Mr. TOWNSEND.)

RXQ. 350. How long has the Transo Paper Company been in business?

A. Since the early part of 1905, as a corporation.

RXQ. 351. How many of these letters, similar to the Palm Brothers letter, have you received from your customers?

A. We have received quite a few; and I dare say that the Palm Brothers letter is a very mild one.



(Testimony of Julius Regenstein.)

Redirect Examination.

(By Mr. BANNING.)

RDQ. 352. I omitted to ask you if you had found the letter [366] from our firm to you, dated December 16, 1903, which was referred to in your testimony the other day?

A. I have looked very carefully over our files several times, but cannot find the original. At the time this letter was received, I was still connected with the American Colortype Company, and Mr. Reese as the patentee handled details of this sort. Mr. Reese kept some of the correspondence at home, since we had no office, and since Mr. Reese is dead I would not know how to proceed to get this original letter.

JULIUS REGENSTEIN. [367]

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[**Restraining Order in American Colortype Co. vs.  
Franklin Union No. 4 et al.]**

*In the Circuit Court of the United States, Northern  
District of Illinois, Eastern Division.*

Present: Honorable CHRISTIAN C. KOHLSAAT,  
Circuit Judge.

Monday, April 4, 1904.

No. 27,168.

**THE AMERICAN COLORTYPE COMPANY**

**vs.**

**FRANKLIN UNION No. 4 et al.**

The complainant having entered its motion for the issuance of a temporary injunction herein in accord-

ance with the prayer of the bill, and the Court having considered said bill and the affidavits in connection therewith, and it satisfactorily appearing to the Court that a proper case is made for the issuance of a restraining order against the defendants pending the hearing of the motion for said injunction,

IT IS ORDERED, that the defendants, Franklin Union No. 4, Charles F. Woerner, and J. M. Shea, who are respectively President and Secretary of said Franklin Union No. 4, Michael Flannery, Norman Stuart, Charles Greene, Maurice Sanger, Andrew Carlson, Harry Gersie, C. Groves, C. Fisher, Fred Becker, M. Jannette, I. Renke, A. Berggren, Max Riggert, J. M. De La Barra, Eugene Hauck, Nick Streidt, Al. Wennesten, Arthur Geng, E. Manz, A. Berg, R. Manfield, G. Greene, Max Krouse, Seymour Symers, C. Blank, Steve Mack, Charles Kunz, Paul Viehwig, Aug. Gauer, R. W. Miller, Ed. Matson, F. Bodemer, H. Bartling, Christ Senn, Leon Stapleford, A. W. Davis, Carl Andrews, and A. Blanford, and each of them, and the persons aiding or abetting or confederating with them with reference to the matters herein enjoined, be, and they are hereby, restrained and enjoined until the hearing of said motion and until the further order of the court herein, [368] from in any manner interfering with, hindering, obstructing or stopping the business of said American Colortype Company, or its agents, servants, or employees, or in the operation of its business aforesaid. And also from entering upon the premises of the American Colortype Company

for the purpose of interfering with, hindering or obstructing it in any manner; and also from compelling or inducing or attempting to compel or induce, by threats, intimidation, unlawful persuasion, force or violence, any of the employees of the American Colortype to fail or refuse to work for it or to leave its employ; and also from preventing, or attempting to prevent, any person or persons, by threats, intimidation, force, violence, unlawful persuasion, from freely entering into the service, or continuing in the service, of the American Colortype Company; and also from doing any acts whatever in furtherance of any conspiracy or combination to obstruct the business of the American Colortype Company or any of its officers or employees; and also from congregating or being upon or about the premises of the American Colortype Company or the streets and approaches or places adjacent thereto, for the purpose of intimidating its employees or preventing or hindering them from fulfilling their duties as such employees, or of inducing or coercing by threats, violence or unlawful persuasion any of the employees of the American Colortype Company to leave its service, or of interfering with it in any manner in the carrying on of the business in the usual and ordinary way, or in any way interfering with or molesting any person who may be employed by, or seeking employment with, the American Colortype Company in the operation of its business; and also from collecting about the approaches of the place of business of the American Colortype Company for the purpose of picketing or patrolling its premises or

the approaches thereto for the purpose of intimidating, threatening, coercing or unlawfully persuading any of the employees of the American Colortype [369] Company or persons seeking employment with it, and from interfering with its employees in going to and from their work, and from going either singly or collectively to the homes of any of the employees of the American Colortype Company, for the purpose of intimidating, threatening or unlawfully persuading them to leave its service, and from intimidating or threatening the wives and families of its employees for that purpose.

IT IS FURTHER ORDERED that the complainant file an injunction bond herein payable to the defendants, in the penal sum of Five Hundred Dollars, with surety to be approved by the Clerk of the Court. And it is further ordered that the hearing of the motion for an injunction herein be, and it is, set down for hearing for the 18th day of April, 1904, at the opening of court on that day, or as soon thereafter as counsel can be heard.

(Here follows the certificate of the Clerk.)

Northern District of Illinois,  
Eastern Division,—ss.

I, JOHN H. R. JAMAR, Clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete copy of the order entered of record in said court on the 4th day of April, A. D. 1904, in the cause wherein The American Colortype Company is the complainant, and Franklin Union No. 4, et al., are the defendants, as



the same appears from the original records and files thereof now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and [370] affixed the seal of said court at my office in Chicago, in said District, this 5th day of December, A. D. 1910.

[Seal]            (Signed) JOHN H. R. JAMAR,  
Clerk. [371]

**[Testimony of Ernest W. Sauerman, for Defendant.]**

ERNEST W. SAUERMAN, a witness produced, sworn and examined on the part of the defendant, in answer to questions by Mr. Banning, deposed and testified as follows:

Q. 1. Please state your name, age, residence, and occupation.

A. Ernest W. Sauerman; age, 30; residence, 2038 N. 42d Avenue, Chicago, Illinois; printing-press man.

Q. 2. Are you acquainted with Mr. Regenstein here?    A. I am.

Q. 3. How long have you known him or been associated in any way with him in business?

A. About thirteen years.

Q. 4. What concern are you working for now?

A. Transo Paper Company.

Q. 5. What are your duties with that company?

A. Superintendent.

Q. 6. How long have you worked for the Transo Paper Company?

A. Ever since it's been in existence.

Q. 7. Before the Transo Paper Company was organized, who were you working for?

(Testimony of Ernest W. Sauerman.)

A. The American Colortype.

Q. 8. How long had you been working for that company? A. About seven years.

Q. 9. What were your duties with that company?

A. A proofer.

Q. 10. What are the duties or work of a proofer?

A. To prove up three-color plates.

Q. 11. Did you ever have anything to do with one-piece transparent window envelopes? A. I did.

Q. 12. Tell us the first connection you had with that kind of envelopes.

A. I remember Mr. Regenstein and Mr. Reese coming to me with some paper and oil and asked me to take an impression of the oil on the paper. [372]

Q. 13. Did you do the work for them?

A. I did.

Q. 14. What did they do with the paper after you had applied the oil, if you know?

A. We found that upon applying the oil to the paper it crawled or spread; so we made a ring plate and printed it on the paper.

Q. 15. What did you print it on the paper for?

A. To cover up the unevenness of the oil.

Q. 16. After the ring had been made and the printing done, as you have explained, what was done with the paper, if you know? A. I do not know.

Q. 17. Who was the pressman or feeder on the machine, if you remember? A. Myself.

Q. 18. After you had printed the paper with the oil and with the ring or border, did you afterwards see any envelopes in which such parts appeared?

By Mr. TOWNSEND.—Objected to as leading.

(Testimony of Ernest W. Sauerman.)

A. You refer to the window with the ring around it?

Q. 19. Yes, that is what I mean. Did you see any envelopes with the transparent window and the ring around it, that you had printed? A. I did.

Q. 20. If you remember, please tell us what kind of ink was used to print the ring around the transparent portion?

A. You refer to the color of the ink or the consistency of the ink?

Q. 21. To the color.

A. We printed them—or rather I printed them—in a good many colors.

Q. 22. If you remember any objection that was found to the ring for printing the colors around the transparent window, please tell us what it was.

A. I don't quite understand the question.

Q. 23. You are familiar with the size and width of the ring [373] that is used by the Transo Company at the present time, in printing their Transo envelopes, are you? A. I am.

Q. 24. How did the first ring that was used for printing around the transparent part, compare with the present ring in width, if you remember?

By Mr. TOWNSEND.—The question is objected to as leading, and for lack of proper foundation.

A. It was narrower.

Q. 25. When, if you can tell us, did you first see envelopes made up out of the paper that you had printed with the oil and with rings or borders around the transparent portion or window?

(Testimony of Ernest W. Sauerman.)

By Mr. TOWNSEND.—Objected to as incompetent, immaterial, and no proper foundation laid.

A. I can't remember the exact date.

Q. 26. State about when it was, as near as you can.

A. I assume it was shortly after I printed the paper. In fact I cut some out by hand and folded them myself.

Q. 27. When would you say that you did this work of cutting out and folding the envelopes yourself, giving, as nearly as you can, the year and the month?

Objected to as irrelevant, incompetent and immaterial.

A. The first part of January, 1904.

Q. 28. At that time, did you belong to any Union, and, if so, what?

Objected to as leading, and furthermore as irrelevant and immaterial.

A. I belonged to the Franklin Union at that time.

Q. 29. Do you remember when you applied for membership in the Chicago Printing Pressman's Union, if you ever did?

Same objection. [374]

A. In January, 1904.

Q. 30. When were you initiated into that Union, if you remember?

Same objection.

A. I believe it was in April, 1904.

Q. 31. Why was there so much delay, if there was any unusual delay, between your application and your initiation?

Objected to as irrelevant and immaterial.



(Testimony of Ernest W. Sauerman.)

A. For some reason or another, we were not accepted by the Printing Pressmen's Union at their regular meetings as we should have, and for that reason were not initiated until April, 1904.

Q. 32. Do you remember anything about the strike involving the Franklin Union No. 4?

Same objection.

A. There was a strike declared about the first of April.

Q. 33. Mr. Sauerman, do you own a house here in Chicago?     A. I do.

Q. 34. Please look at this paper, purporting to be a trust deed, and see by whom it is signed?

A. It is signed by myself.

Q. 35. What is the date of that trust deed?

By Mr. TOWNSEND.—This line of examination is objected to as irrelevant and immaterial to any of the issues involved in this case.

A. The 27th day of April, 1904.

Q. 36. I see pinned to this trust deed a paid and canceled promissory note for seven hundred fifty dollars. Please look at it and tell us whose name is signed to that note.

Same objection.

A. It is my own.

Q. 37. What is the date of that note?     [375]

A. April 27, 1904.

Q. 38. What were this note and trust deed that you have identified given for?

Same objection.

A. For the purchase of my house.

(Testimony of Ernest W. Sauerman.)

Q. 39. When did you purchase your house for which the note and trust deed were given?

A. That was the day when I closed up the deal, as shown on these papers.

Q. 40. April 27, 1904?      A. Yes, sir.

Q. 41. I see the note and trust deed are marked as paid and canceled, from which I infer that you paid your debt, is that correct?      A. It is.

Q. 42. Mr. Sauerman, are you a married man?

A. I am.

Q. 43. Have you any children?      A. I have.

Q. 44. When were they born?

A. My oldest boy was born the 27th of March, 1904.

Q. 45. How did this strike, that we have mentioned before, affect you, so far as being at home at or about the time your boy was born?

Same objection previously entered to this line of examination.

A. The boy was born a couple of days before the strike was declared, and I was not able to go home for about four or five nights, and used to send a friend to calm my wife, she being in bed.

Q. 46. Do you mean to allay her fears for your safety, or something of that sort?

A. That was the very reason.

Q. 47. Now, we have been talking about several dates—your application for membership in the Printing Pressmen's Union—the time you purchased your home—the birth of your child—the existence of the strike. With those dates in mind, I will ask you to state whether it was before such dates or [376]

(Testimony of Ernest W. Sauerman.)

after them that you assisted in making those first envelopes with the ring or border around the transparent portion, as you have explained.

The question is objected to as leading.

A. Before.

Q. 48. Do you think you would recognize any of those first envelopes that were made, with the ring or border, that we have been talking about?

A. I can.

Q. 49. I show you two envelopes, and ask you to examine them and tell us what they are.

A. I printed them myself.

Q. 50. Do you mean that these two envelopes that I have shown you were some of those that you printed, with the rings or borders, as you have explained?     A. They are.

Q. 51. The envelopes that I have shown you are the ones that have been offered in evidence in the deposition of Mr. Regenstein, and are marked "Defendant's Exhibit January, 1904, Envelop No. 1," and "Defendant's Exhibit January, 1904, Envelope No. 2," are they not?     A. They are.

Cross-examination.

(By Mr. TOWNSEND.)

By Mr. TOWNSEND.—I move that all of the witness' deposition which he has just given, beginning with Q. 28, page 118, and following, to and inclusive of Q. 48, page 122, be struck out, on the grounds that all of such testimony as might be deemed material is based on and elicited by leading questions, and that

(Testimony of Ernest W. Sauerman.)

all the rest of the testimony is irrelevant and immaterial.

Q. 52. Not waiving any of the objections previously made, I will ask you, Mr. Sauerman, who suggested originally— [377] yourself, Mr. Reese, or Mr. Regenstein—the idea of printing a border around the transparent window to cover up the creep of the oil? A. I believe Mr. Regenstein did.

ERNST W. SAUERMAN.

Adjourned until Tuesday, December 6, 1910, ten o'clock A. M. [378]

Chicago, Illinois, December 6, 1910.

Parties met pursuant to adjournment. Present as before.

**[Testimony of Joseph Wien, for Defendant.]**

JOSEPH WIEN, a witness produced, sworn and examined on the part of the defendant, in answer to questions by Mr. Banning, deposed and testified as follows:

Q. 1. State your name, age, residence and occupation.

A. Joseph Wien; age, 33; 1366 S. Morgan Street, Chicago, Illinois; with the Regensteiner Colortype Company.

Q. 2. How long have you known Mr. Julius Regenstein? A. About fifteen years.

Q. 3. Have you ever worked under him?

A. I have.

Q. 4. For about how long?

A. For about ten years.



(Testimony of Joseph Wien.)

Q. 5. What were your duties or what were you doing?     A. I was proofing.

Q. 6. What do you mean by proofing?

A. After the engraver gets through with the plates, we prove them up and see what the results of the plates are.

Q. 7. You know what Transo envelopes are, do you?     A. Yes, sir.

Q. 8. When did you first know of work being done on one-piece transparent window envelopes?

Objected to as leading, and no proper foundation laid.

A. In about January, 1904.

Q. 9. Who was working on that kind of envelopes?

A. Ernest Sauerman.

Q. 10. What was he doing?

Objected to as irrelevant and immaterial.

A. He was putting oil on the envelopes.

Q. 11. What kind of a press was he using?

A. Universal.

Q. 12. Was that at Mr. Regenstein's place?

A. Yes, sir.

Q. 13. Tell us, as far as you remember, what was done by Mr. Sauerman. [379]

Objected to as irrelevant and immaterial, and no proper foundation laid.

A. Why, Mr. Sauerman was putting oil on the envelope.

Q. 14. On the envelope, or on the paper, which do you mean?     A. On the paper.

Q. 15. You may tell us whether you saw Mr.

(Testimony of Joseph Wien.)

Regenstein there during those operations.

A. Mr. Regenstein was there during the operations.

Q. 16. When did you first see, if you did see, a ring or border printed around the transparent portion formed by the oil?

Objected to as leading.

A. On the same day that the oil was put on the envelope. In January, 1904.

Q. 17. If there is any circumstance that enables you to fix the date as January, 1904, please mention such circumstance. A. About January 15, 1904.

Q. 18. What circumstances enables you to name that date as about the time when you saw the paper with the oil and ring applied to it?

A. At that time we made application for the Pressmen's Union, which was about January 15, 1904.

Q. 19. Who do you mean by "we"?

A. Mr. Sauerman, myself, and several others who were in there at that time.

Q. 20. What caused you and the others to apply for membership in the Pressmen's Union?

Objected to as irrelevant and immaterial.

A. The cause of that was promotion from the Feeders' Union to the Pressmen's Union. One was recognized as a Feeders' Union only, and the other was recognized as a Pressmen's Union only.

Q. 21. Did any one object to your doing press work while [380] belonging simply to the Feeders' Union?

Same objection.

(Testimony of Joseph Wien.)

A. Not exactly, but the time was ripe that that department had to go into the Pressmen's Union.

Q. 22. Did you yourself personally do any work, printing or otherwise, on these one-piece transparent window envelopes, or the paper for making them?

A. I did.

Q. 23. What was that work?

A. I printed the oil on the paper, and later in the afternoon I printed the border around the window.

Q. 24. How did it happen that you as well as Mr. Sauerman did that kind of printing on the paper?

A. Mr. Sauerman was working on the universal press, and he didn't have any experience on the cylinders at that time. Mr. Regenstein asked me to print that on the cylinder for him, which I done.

Q. 25. When, if at any time, did you see any envelopes made up out of the paper, that you or Mr. Sauerman had printed with the oil and ring, as you have explained? A. That was in January, 1904.

Q. 26. You have referred to your application for membership in the Pressmen's Union as being made about January 15, 1904. Was it before or about at the time of your application that you saw these envelopes?

Objected to as leading, and suggestive of the desired answer.

Mr. BANNING.—Question withdrawn.

Q. 27. You have referred to your application for membership to the Pressmen's Union as having been made about the middle of January, 1904. When, with reference to that time, would you [381] say

(Testimony of Joseph Wien.)

that you saw envelopes with the transparent windows and the rings around the windows, made out of paper printed by yourself, or Mr. Sauerman?

Objected to as leading in the extreme and suggestive of the desired answer.

A. In about January, 1904.

Q. 28. Before or after your application for membership in the Pressmen's Union? A. Before.

Q. 29. If you remember, please tell us how the ring used for printing the border around those first envelopes compares in width with the ring now used on the regular stock Transo envelopes.

A. The ring was about an eighth of an inch in width on the first envelope.

Q. 30. If you remember, tell us what kind of inks were used in printing the ring or border around the window.

A. We tried several inks, but found that the opaque colors were the only colors we could use.

Q. 31. Do you remember anything about a strike or difficulty of that kind with the Franklin Union No. 4, here in Chicago?

Objected to as irrelevant and immaterial.

A. I do.

Q. 32. About when did that occur, if you remember? A. About the early part of March, 1904.

Q. 33. Do you remember what caused that strike? Same objection.

A. The proofers going into the Pressmen's Union.

Q. 34. Do you mean yourself and others going into the Pressmen's Union? A. Yes, sir.



(Testimony of Joseph Wien.)

Q. 35. Please tell us about how active or violent that strike became.

Same objection. [382]

A. The strike was so violent we could not go home for two weeks.

Q. 36. Did any of the fellows get beat up or slugged during that strike? A. Yes, sir.

Q. 37. Do you think you would recognize, at the present time, any of the envelopes which you say were made with the ring around the transparent window, in January, 1904, if you were to see them now?

A. I would.

Q. 38. Look at these two envelopes that I now show you, and state what they are, if you know.

A. This is one of them printed with oil in January, 1904, with a ring around it, that I remember.

Q. 39. What is the name printed in typewriting on the envelope that you have just referred to?

A. Defendant's Exhibit January, 1904, Envelope, No. 1.

Q. 40. Look at this other envelope that I show you, and state whether or not you recognize it.

A. I recognize this as No. 2 envelope.

Q. 41. Which one would you say was made first, if there is any difference? A. Envelope No. 1.

Q. 42. What is printed on this second envelope that I have shown you?

A. Defendant's Exhibit January, 1904, Envelope, No. 2.

Q. 43. What kind of ink was the ring printed with in the No. 2 envelope? A. Opaque ink.

(Testimony of Joseph Wien.)

Q. 44. Look at the width of the ring printed on these two envelopes, and state whether that is the width that you referred to in one of your previous answers as about an eighth of an inch wide.

A. That is the width.

Q. 45. With these two envelopes before you, when would you say that you saw them first? [383]

A. In about January, 1904.

Cross-examination.

(By Mr. TOWNSEND.)

XQ. 46. Are those old envelopes, Exhibits No. 1 and No. 2, exact same envelopes that you saw, you say, in 1904, or are they copies?

A. Those are envelopes that I saw in 1904.

XQ. 47. Have these two envelopes introduced in evidence as Defendant's Exhibits Old January, 1904, Envelopes Nos. 1 and 2, been in your custody and possession for the past six years or so?

A. They have not.

XQ. 48. When did you first see these two envelopes before you? A. About January, 1904.

XQ. 49. As a matter of fact, had you ever seen those two precise envelopes before they were shown to you a few minutes ago by counsel?

A. I have seen envelopes in January, 1904.

XQ. 50. That is not an answer to my question.

A. I decline to answer that.

XQ. 51. What day was that strike declared?

A. About March, 1904.

XQ. 52. What time in March?

(Testimony of Joseph Wien.)

A. About the early part of March.

XQ. 53. Can't you come a little closer to the date than that? A. No.

XQ. 54. Are you sure it wasn't in April?

A. No.

XQ. 55. You are not sure it was not in April?

A. No.

XQ. 56. How long did the strike last?

A. About two weeks.

XQ. 57. What was the reason of settling the strike? Or what brought about a settlement of the strike?

A. The settlement of the strike was that the proofers should stay in the Pressmen's Union, and the entire shop with the International organization, which the Franklin Union lost. [384]

XQ. 58. Were you a striker? A. I was not.

XQ. 59. What Union did you belong to?

A. Franklin.

XQ. 60. How long have you been a member of Franklin Union? A. About four years.

XQ. 61. Was Mr. Sauerman a member of Franklin Union? A. He was.

XQ. 62. When did you join Franklin Union?

A. I can't go back that far.

XQ. 63. What do you mean by not being able to go back that far? A. I decline to answer.

XQ. 64. When did you make application for membership in the Franklin Union?

A. I decline to answer.

(Testimony of Joseph Wien.)

XQ. 65. Why was it that you said that the envelope, Defendant's 1904 Exhibit No. 1 was printed before Defendant's Exhibit 1904 Envelope No. 2?

A. Because I have seen it printed first.

XQ. 66. What interval of time intervened between the printing of No. 1 envelope and No. 2 envelope?

A. I cannot specify the exact time.

XQ. 67. Was there a difference of one day, or one week, or one month, or one year?

A. They were both done in January, 1904.

XQ. 68. How is it that you are positive that one was printed before the other, and what's the reason for your answer?

A. That is very simple for me to answer, for I had seen the No. 1 envelope printed first.

XQ. 69. Why do you know that No. 1 was printed first, and why do you have such a clear recollection as to that fact?

A. The No. 1 envelope is so poor—the border is so poor around it—that it would be impossible to forget the [385] difference between the two.

XQ. 79. And that is your reason of saying that No. 1 was printed before No. 2?      A. Yes, sir.

XQ. 71. You said that you had used or experimented with a number of different colors of border before you adopted opaque ink. What other colors did you use or try?

A. I have only tried one tint before I adopted opaque color.

XQ. 72. What tint was that?

A. That's the one you see on No. 1 envelope.



(Testimony of Joseph Wien.)

XQ. 73. What was the general comment at the time you say this work was done and you produced the old envelope Defendant's Exhibit No. 2? Was it considered something pretty good and new, or what?

A. The border around the envelope was not anything new, to my knowledge. I have seen those things done every day.

XQ. 74. That is not an answer to my question.

A. I couldn't say that it was considered new because I had seen that done every day.

XQ. 75. You mean to say that prior to that time, you had seen, every day, transparent envelopes, like the Defendant's No. 2, with a border around them?

A. No. I mean to say that I have seen borders printed around, similar to the ones around the envelopes, on other stuff.

XQ. 76. What do you mean by "other stuff"?

A. Well, anything in color work that has defective edges.

XQ. 77. I suppose you are referring to three-color work and pictures such as shown in this old Art Calendar, defendant's exhibit; am I right?

A. Not exactly that. I have seen other stuff besides that, which I have printed myself, millions of them. [386]

XQ. 78. What I want is for you to define more clearly what you mean by "other stuff"?

A. Any commercial work of all kinds—everything in general in the line of printing.

XQ. 79. I believe you have just stated that you had never seen it used, though, in connection with the

(Testimony of Joseph Wien.)

manufacture of one-piece transparent envelopes; that is right, isn't it?     A. No.

XQ. 80. Then do you mean to say that you had seen a border used around transparent one-piece envelopes, or a border around the window of said envelopes, before these 1904 operations?

A. I have seen a border printed around all kinds of work, not exactly envelopes alone.

XQ. 81. I ask for an answer to the question.

A. I had not seen a border printed around envelopes.

XQ. 82. In any of that old printing or commercial work, where you say you had seen a border, was it common to print the picture on one side of the paper and put the border on the other side of the paper?

A. You mean the picture on the back of it and the border on the face of it—was it common to do that?

XQ. 83. Yes.     A. No.

XQ. 84. What was the general comment around the shop, when this old envelope No. 1 and No. 2 was produced? I am not asking for what you may have known about a border in three-color work being old, but what did Mr. Regenstein or Mr. Reese or any one else interested say in your presence about what they thought of that envelope as an envelope?

A. I decline to answer.

XQ. 85. You said that one of the difficulties you had in getting up that old envelope or printing it, rather, was to find a proper opaque ink. Please give us a detailed [387] statement of just the steps you

(Testimony of Joseph Wien.)

took, or the experiments you made before you arrived at what you thought was satisfactory result.

A. I decline to answer.

XQ. 86. What was the year and month that you went to work first for Mr. Regenstein or for his firm or concern with which Mr. Regenstein was connected at that time?

A. I worked for American Three-Color about ten years ago, with which Mr. Regenstein was connected.

XQ. 87. Question re-read.

A. I cannot state the year or month. It's about fifteen years ago that I first began. I worked altogether about ten years for the American Three-Color, which was afterwards consolidated and called the American Colortype.

XQ. 88. Going back to the time when you were working for the American Colortype Company under Mr. Regenstein in January, 1904, how long previous to January, 1904, had you been continuously with Mr. Regenstein's company?

A. I was with that company prior to January, 1904, about five years, when it was called the American Colortype Company.

XQ. 89. Give the year, as near as you can, when you began with the American Colortype Company, in accordance with your last answer.

A. It is pretty hard, as to the time. It is hard for me to give the exact date prior to that time, for it is about three years and a half since I am away from the American Colortype.

XQ. 90. What month did you quit the American

(Testimony of Joseph Wien.)

Colortype? A. In July.

XQ. 91. What year? A. 1907.

XQ. 92. So you can't tell when you went to work for the [388] American Colortype Company any nearer than it was four or five years before January, 1904? Is that correct? A. Yes, sir.

XQ. 93. Are you able to say whether it was in 1901, or 1900, or 1899? A. No.

XQ. 94. What Union did you belong to in January, 1904? A. Franklin.

XQ. 95. At the time these envelopes were made, as you testified, in January, 1904, just what were your duties in the press-room?

A. My duties in the proving-room as a proofer.

XQ. 96. What did you have to do around the presses? A. A proofer of plates.

XQ. 97. Is the press-room and the proof-room different? A. Yes, sir.

XQ. 98. Where do you do your proofing up of the plates, on the press itself or in the proofing-room?

A. There is presses in the proofing-room to do the proofing up.

XQ. 99. Were these old envelopes of 1904, Nos. 1 and 2, printed on one of the presses in the proofing-room or one of the presses in the press-room?

A. They were printed on one of the presses in the proofing-room.

XQ. 100. Who was the pressman or feeder on the machine that printed those old envelopes of 1904?

A. Ernest Sauerman printed some of the envelopes.



(Testimony of Joseph Wien.)

XQ. 101. Who printed those two before you, Defendant's Exhibits Nos. 1 and 2?

A. Mr. Sauerman.

XQ. 102. Did you print any yourself?

A. I did. [389]

XQ. 103. How are you able to distinguish the ones that you printed and the ones that Mr. Sauerman printed?

A. I finished the job on the pony press after Mr. Sauerman started.

XQ. 104. That is not an answer to the question.

A. That's very hard.

XQ. 105. But you have just sworn that Mr. Sauerman printed those two and you did not. Now, what was the reason for that answer?

A. Mr. Sauerman has done the biggest part of the envelope work. I just had about one or two experiences with them.

XQ. 106. As a matter of fact, did you ever print any of those old envelopes in 1904, as you have testified to, yourself? A. I did.

XQ. 107. Then, you have not stated how you recognized those two particular envelopes, marked Defendant's Exhibits No. 1 and No. 2, and which you have sworn were printed nearly seven years ago, as the work of Mr. Sauerman and not of yourself. Did you use one kind of paper and Sauerman use another, or did you do your work with one kind of ink and Sauerman do his with another, or is there some other distinguishing feature by which you so readily recognize these envelopes as not the ones made by

(Testimony of Joseph Wien.)

yourself? I would like to have you explain, for the benefit of the Court, the reasons for your previous answers that these envelopes were Sauerman's work, and not your own.

A. The reasons for those envelopes being Sauerman's work is the difference the way the ink lays on the paper. That is the reason it is Sauerman's work—the two presses do not give the same kind of an impression.

XQ. 108. Just explain a little more fully what you mean by the ink laying on the paper. [390]

A. The ink on the paper on a universal press has a tendency to squeeze right out, which will cause modulation, which you plainly can see, which it does not do on the cylinder press.

XQ. 109. Are you referring to the border or to the printing of the oil? A. Both.

XQ. 110. What kind of a press were you working with at that time? A. A cylinder press.

XQ. 111. What sort of a press was the oil put on with?

A. The oil was put on with a universal press, on those envelopes that are now here.

XQ. 112. At that time, what part of the shop did Mr. Sauerman work in?

A. Mr. Sauerman and I worked alongside of one another.

XQ. 113. Who applied the border?

A. Mr. Sauerman applied the border on those envelopes that are now here.

XQ. 114. Who made the border?

(Testimony of Joseph Wien.)

A. Mr. Olson made the border, under Mr. Regenstein's instructions.

XQ. 115. Were you present, and did you hear Mr. Regenstein give those instructions to Mr. Olson?

A. I was, and I heard Mr. Regenstein tell Mr. Olson to make a border for the envelope.

XQ. 116. Just what did Mr. Regenstein say?

A. "Gus, go upstairs, take a block of zinc, make a border as soon as possible so I can print around this paper."

XQ. 117. Just what hand did you have in making those two particular envelopes before you, Defendant's old Exhibits 1 and 2?      A. None.

XQ. 118. How did you know that the work then being done, of applying the oil and putting on of a border, was for an envelope with a transparent window?

A. I overheard them say something about an envelope, which would be transparent. [391]

XQ. 119. Just what did you hear, or what conversation took place along that line?

A. All I heard was that they were trying to make an envelope that will transfer the address to do away with addressing the envelope.

XQ. 120. Did you use an envelope-making machine in making these old January, 1904, envelopes?

A. I did not see an envelope machine in the factory.

XQ. 121. Was there an envelope-making machine in the factory?

(Testimony of Joseph Wien.)

A. I did not see any machine in the factory.

XQ. 122. Question re-read.

A. Not to my knowledge.

XQ. 123. Your company was not in the business of manufacturing envelopes, was it?

A. Not to my knowledge.

XQ. 124. I believe you stated that you saw all the operations of making these two complete envelopes, Defendant's 1904 Exhibits Nos. 1 and 2; that is correct, is it not? A. No.

XQ. 125. Wherein is it incorrect, and just state what you do know about the manufacture of those two particular envelopes, complete as they stand.

A. I have seen them print the oil and the border, on these envelopes.

XQ. 126. Who did the folding and pasting of the two envelopes before you?

A. That I do not know.

XQ. 127. Where were the folding and pasting done? A. That I do not know.

XQ. 128. How long a time elapsed between the preparation of the paper for those envelopes and the time when you saw those two envelopes complete? A. About two weeks.

XQ. 129. How do you fix that interval of time so definitely?

A. That is when I seen them in the proofing department. [392]

XQ. 130. Question re-read.

A. That is when I seen them in the proofing department after they were printed.



(Testimony of Joseph Wien.)

XQ. 131. I still believe that is not an answer to the question.

A. That is the best answer I can give to that effect.

XQ. 132. When and where did you see the paper first, prepared and ready for folding into the envelopes, Exhibits 1 and 2?

A. In the proofing department, two weeks—about two weeks before I seen them finished.

XQ. 133. When and where did you see them finished?

A. In the proofing department, about two weeks after they left the proofing department.

XQ. 134. Still we are at sea for a starting point of time for either of your answers of the last two questions. Are you able to supply the deficiency by the day, month and year in either case?

A. In January, 1904. The latter part. I seen those envelopes in the proofing department.

XQ. 135. So you have now fixed the date of seeing these envelopes, Defendant's 1904 Exhibits 1 and 2, definitely as the latter part of January, 1904. That is correct, is it not? A. Yes.

XQ. 136. It couldn't by any possibility have been the early part of January, 1904, that you saw them complete? A. No.

XQ. 137. How do you account for so long an interval between the time you first saw the sheet prepared in the early part of January until the time you saw the completed envelope two weeks later?

A. Because they were not in my possession to see them any sooner.

(Testimony of Joseph Wien.)

XQ. 138. With what sort of a press—a universal press or a cylinder press—was the border printed on these old [393] January, 1904, envelopes?

A. Gally universal.

Redirect Examination.

(By Mr. BANNING.)

RDQ. 139. Am I to understand, from some of your answers, that there is a difference in the way the ink is placed on the paper by a universal press and by a cylinder press, so that such difference may be discerned or observed by one experienced with the operation of such presses? A. There is a difference.

RDQ. 140. Mr. Townsend asked you several questions which you stated that you declined to answer. Why did you decline to answer those particular questions?

A. Because I thought I could not give correct answers to them.

RDQ. 141. Then, may I understand that when you stated that you declined to answer the questions, you meant that you could not give a definite or absolute answer to the questions?

A. You may so understand.

Recross-examination.

RXQ. 142. And I suppose it is equally true that all of your answers given to questions propounded to you by both Mr. Banning and myself are definite and absolute answers to those questions?

A. They are.

(Testimony of Joseph Wien.)

Redirect Examination.

(By Mr. BANNING.)

RDQ. 143. You mean as far as you were able to make them definite and absolute, do you? A. I do.

JOSEPH WIEN.

Adjourned until Wednesday, December 7, 1910, 10 o'clock A. M. [394]

Chicago, Illinois, December 7, 1910.

Parties met pursuant to adjournment. Present as before.

**[Testimony of Gustaf Olson, for Defendant.]**

GUSTAF OLSON, a witness produced, sworn and examined on the part of the defendant, in answer to questions by Mr. Banning, deposed and testified as follows:

Q. 1. State your name, age, residence, and occupation.

A. Gustaf Olson; age, 33; 3617 Wrightwood Avenue, Chicago, Illinois; engraver by trade.

Q. 2. For whom are you working?

A. American Colortype Company.

Q. 3. How long have you worked for the American Colortype Company?

A. I have worked in this company sixteen years.

Q. 4. Was it always known by the name of the American Colortype Company?

A. No. American Three-color Company and Photo Colortype Company.

Q. 5. How long have you known Mr. Julius Regenstein, here present? A. About sixteen years.

(Testimony of Gustaf Olson.)

Q. 6. About how long have you worked under Mr. Regenstein?

A. I should think about eleven years.

Q. 7. What kind of work were you engaged in while working under Mr. Regenstein?

A. As engraver.

Q. 8. As engraver, what kind of work or engraving did you do?     A. Three-color work.

Q. 9. What part of the work did you do?

A. In engravings, similar to wood engravings. It's finish-up color work.

Q. 10. How finish-up color work?

A. In color-work, the mechanical parts leaves pictures a little bit underdone, and an engraver must necessarily go over it by tooling, and in that way correcting colors to make the reproduction more like the original from which it was photographed.

Q. 11. What, if anything, was done to give the margin or edges [395] of the pictures a finished or ornamental appearance?

The question is objected to as irrelevant and immaterial of any of the issues of the present case.

A. We must necessarily engrave a plate that will constitute a line covering over any defects that are left in between edges or borders.

Q. 12. Did you make such plates in your work as engraver?     A. Yes; often.

Q. 13. How long have you made plates for printing a border or ring around and over the edges of colored pictures, to cover up defects, such as you have mentioned?



(Testimony of Gustaf Olson.)

The question is objected to as leading and suggestive, and as not in accord with the testimony of the witness as to what had been his practice; the question is further objected to as irrelevant and immaterial, to either of the issues of infringement or of anticipation, or to show any prior art.

A. Off and on for seventeen or eighteen years; as I was a wood engraver before working for this company.

Q. 14. Look at this book which I now show you, which has been offered in evidence as Defendant's Exhibit Osborne Art Calendar for 1900, and state how long you have known of Osborne Art Calendars showing pictures of the general character of those contained in this book shown you.

A. Sixteen years back, I have seen work of this kind; and Osborne work about ten years.

Q. 15. Please indicate some pictures in this Osborne Art Calendar shown you, which show or illustrate borders around the pictures, such as you say you have made, if you find any such pictures.

The question and all questions along this line are objected to as irrelevant and immaterial. [396]

A. I call your attention to the picture No. 4453, "When the Frost is on the Pumpkin and the Fodder's in the Shock." This picture shows a green border printed over and around the edges of the color reproduction. This leaves an unfinished effect, as will be noticed by a dark rim showing between color illustration and border.

Q. 16. What do you mean by saying, "This leaves

(Testimony of Gustaf Olson.)

an unfinished effect''?

A. It shows where color reproduction and tint join together in one edge unsuccessfully in this case. Thereby leaving a dark green edge. This condition is overcome on page 20 in the same book in the plate No. 2024, "The Bride and the Fortune-Teller," by printing a gold border, and thereby eliminating this dark green edge, which otherwise shows, by overlapping of colors. Also page 7, plate No. 4514, "Tales of Chivalry." This shows a printed color-type with gold border. This gold border is covering over edges, which would otherwise show in yellow, red or blue. There are also other illustrations in the book which demonstrate the same.

Q. 17. What is the purpose or object of the ring or border around the pictures, such as you have called attention to and others in this book?

Same objection, and on the further ground that the witness has not been shown to be an expert in envelopes and in the manufacture of envelopes of the character here in question.

A. Primarily, to cover defects; secondarily, to enhance the beauty and value in some cases.

Q. 18. I ask you to look at this book and point out two or three illustrations of pictures unprovided with borders, which illustrate the effects that you have reference to.

A. Page 12, plate 4154, "An Old Road in Virginia—Sunset," [397] shows a red and yellow discoloration on the bottom of the left-hand side of the picture. Plate 4654, "Among the Lilies," opposite page

(Testimony of Gustaf Olson.)

16, the bottom right-hand side and top, show bad discolorations, due to the plates not being properly cut. Page 15, plate 4634, "A Venetian Girl," the right-hand side of the plate shows red and yellow extending below the blue, consequently giving a discoloration. The top and left-hand side also show ragged edges.

Q. 19. How long do you say that you, yourself, have made plates for the printing of rings or borders around and over the edges or margins of the pictures, to cover up or conceal defects and to add a finished or ornamental appearance to the picture?

Same objection.

A. About seventeen years.

Q. 20. Did you ever make such plates for other kinds of pictures than color pictures?      A. Yes.

Q. 21. What kinds?

A. Before I worked in color work, we often made what is called two-tone, as showing a green and orange, or red and blue, and when picture would show bad edges, we were obliged to print borders around and over those edges.

Q. 22. About how many years ago was that?

A. About sixteen or seventeen years, and often in the intervals since then.

Q. 23. What was the object or purpose of the borders around these green and orange, or red and blue pictures?      A. They were to cover up defects.

Q. 24. Did you ever make any plates for printing borders for any purpose for or under the direction of Mr. Regenstein?      A. Yes.

Q. 25. Please tell us what you made borders for

(Testimony of Gustaf Olson.)

Mr. Regenstein [398] for.

Objected to as irrelevant and immaterial, as the witness states that he was an engraver in the employ of Mr. Regenstein in the manufacture of three-color work; and it is not seen that the making of any specific borders for this sort of work, by express orders from Mr. Regenstein, would contribute to the determination of the issues of this case.

A. We made one especially of a ring to print over and around the window in an envelope.

Q. 26. Did you yourself make a plate for the ring or border mentioned in your last answer?

The question is objected to as irrelevant and immaterial, and no proper foundation laid.

A. Yes.

Q. 27. Prior to making the plate for the ring or border for the envelope, had you made plates for rings or borders for or under the direction of Mr. Regenstein, for other classes of work?

Objected to as irrelevant and immaterial.

A. Yes, sir, as referred to before.

Q. 28. How common a thing was it to make plates or rings and borders at Mr. Regenstein's place before you made the one for the envelope?

Same objection.

A. It was so common that any engraver would make a ring of this kind immediately upon seeing that the pictures showed any ragged edges, without even consulting with the foreman. In fact, everybody in the printing business used that method to cover defects.



(Testimony of Gustaf Olson.)

Q. 29. Please tell us about how you came to make the plates for the ring or border for the envelope work, that you have [399] referred to.

Objected to as irrelevant and immaterial, and no proper foundation laid.

A. Mr. Regenstein called me down to the office and instructed me how to make this ring.

Q. 30. What instructions did he give you?

A. He told me to make a ring on a plate of zinc to print around a window of an envelope, which he gave me as a size to go by.

Q. 31. Did he explain what he wanted it for?

A. Yes, sir.

Q. 32. Did he show you anything to go by?

A. Yes; as I have previously answered, he gave me a sheet of paper showing an oblong spot covered with oil and told me to make a ring to print around the edges.

Q. 33. Did you make the plate as directed by Mr. Regenstein?      A. Yes.

Q. 34. You may state what the fact may be as to whether or not you saw the plate used, or paper printed with the ring or border around the transparent portion for which you had made the plate.

A. Yes. When an engraver makes a plate he must necessarily see how it looks when printed, to determine whether he has made that plate correctly or not.

Q. 35. Do I understand that you saw and examined the paper with the ring or border printed from the plate that you had made?

A. I saw and looked at it—I didn't examine it thor-

(Testimony of Gustaf Olson.)

oughly, as to anything else but the way the plate fit.

Q. 36. How was the window in the paper, with the border printed around it, apparently made, if you remember?

The question is objected to, for the reason that the witness has just stated that he did not examine it except to see the way the plate fit. [400]

A. It was printed on a press by using oil instead of ink, which does not need examination other than looking at it to know.

Q. 37. The window or transparent portion was made in the paper itself, and not by a separate piece, was it?

A. It was only one sheet of paper, which became transparent by the use of oil in the spot where printed.

Q. 38. About how wide was the plate that you made for the envelopes,—by which I mean about how wide a ring or border did it print?

A. About one-eighth of an inch.

Q. 39. If you know, please state who did the printing on the press with this plate.

A. Ernest Sauerman.

Q. 40. If you know, state the kind of a press that Sauerman was using.

A. It is known as a universal press.

Q. 41. Did you make any other plate or plates for printing rings or borders around the transparent spot or portion on the paper for envelopes, like this one you have been telling us about?

(Testimony of Gustaf Olson.)

A. Yes, we made some more two or three weeks later.

Q. 42. What was the difference, if any, between the ones that you made after the first ones and such first ones? A. The next ones were a trifle wider.

Q. 43. Please look at these envelopes that I show you, and state whether there is anything shown on them which you recognize as your work, or about which you did anything.

A. I recognize these envelopes as printed by the plates I made.

Q. 44. Do you mean the first plate that you made or the later ones? A. The first plate.

Q. 45. About when was it, as nearly as you can remember or state, that you made these plates for printing the rings or borders for envelopes, as directed by Mr. Regenstein and as you have [401] explained?

I object to the question as leading, in that the witness has just had before him and has carefully examined the two envelopes referred to, and has attempted to identify them, or certain work that he did on them, and that on the face of each envelope there is printed, on a typewriting machine, the date which is evidently desired shall be given by the witness in his question.

A. In January, 1904.

I move that the answer be struck out, for the reasons stated in the objection.

Q. 46. How are you able to remember about the time when you made the plates for Mr. Regenstein for the envelope paper?

(Testimony of Gustaf Olson.)

Objected to as incompetent, in view of the foregoing circumstances.

A. Two months after this first trial, or about two months, we had a strike in our factory of Franklin Union No. 4 with Pressmen's Union No. 3, and I, as foreman of the engraving and proofing department, was obliged to go to Ernest Sauerman's home and acquaint his wife of how matters stood with him, as he had to stay in the factory night and day. Furthermore, my memory is keen on that matter as Sauerman's wife had given birth to a child a few days before this strike, consequently it became a moral obligation on my part to also keep Ernest Sauerman informed how his family was getting along; and I remember very well that this first plate I made was about two or three months previous to the strike.

Q. 47. At the time you made the first plate for the envelope border or ring, were you informed what the paper containing the transparent spot or portion which the border was to surround was intended for?

[402] A. Yes.

Q. 48. What were you told that it was intended for?

A. Mr. Regenstein explained to me that this oil leaked or ran in the fibers of the paper, so that it presented an unfinished appearance to the envelope, and that I should make the ring with which he would correct the appearance of it, by printing a border around the oiled spot.

Q. 49. Prior to that time, had you ever made rings or borders to cover up the ragged appearance around



(Testimony of Gustaf Olson.)

grease or oil spots?

Objected to, if it is attempted to prove by this witness anticipation by prior use, as his name has not been noticed to the complainant, as required by statute; and furthermore the question is objected to as suggesting the desired answer; also as incompetent and immaterial to show any prior art.

A. That question could be answered either way—yes or no. Ink is made up of a combination of different things, which is greasy to the touch, so that in making the rings to cover printing that shows bad edges, discolorations made by different colored inks, I would answer the question yes. On the other hand, this was the first time that I had made any plates to cover anything exactly like this envelope referred to.

Q. 50. If you know, state what the fact may be as to some kinds of inks printing or running so as to present ragged or unsightly edges in the work done.

Objected to as irrelevant and immaterial.

A. I am not an ink-maker, and do not know the ingredients used in making ink, but I do know that some ink runs a great deal, leaving ragged edges when printing, as if there were too much oil, and I know of other inks that we use in printing [403] covers and other things of that kind, such as rough papers and paper that is too highly finished. Consequently we call this a cover ink, and it is used because it is very thick and does not flow freely.

Q. 51. Prior to making the plates for the rings or borders for the envelope paper, as you have explained, had you seen work where the inks ran or

(Testimony of Gustaf Olson.)

spread at the borders?

A. It does so in most every case where a solid plate is used. I have seen this as far back as I can remember being in business.

Q. 52. In such cases as you have just mentioned, what was done, if anything, to cover up the running and spreading of the ink at the borders or edges?

A. In the first place, the printer would thicken up his ink or use a different kind of ink to prevent this spreading or he would run something around the border or edge to hide this defect.

Q. 53. Did you ever make any plates for the printing of a ring or border around the edges, to cover up the running or spreading of the ink as you have just mentioned?

The question is objected to as irrelevant and immaterial, unless it is shown to be connected with the art of transparent window envelopes.

A. Yes, just as often as the printer would decide that by printing a border he could eliminate the ragged appearance of the edges of the picture, I would have to make a plate for him.

Q. 54. How long ago have you made plates for printing a border around work, where the ink ran or spread, so as to present ragged or unsightly edges or margins?

Same objection. [404]

A. About sixteen or seventeen years ago.

Q. 55. How common a practice was it, to your knowledge, in the printer's art, to print rings or borders around different kinds of work, where the

(Testimony of Gustaf Olson.)

ink ran or spread, to cover up defects or unsightly appearances in the edges or margins of the work?

Same objection.

A. It is so common that everybody in the printing establishment would be expected to know it.

Q. 56. Was it a part of the common knowledge and practice of the printer's art?      A. Yes.

Recess.

Q. 57. Referring again to the Osborne Art Calendar, and particularly to the pictures containing what I believe you called the gold border, I will ask you if such gold borders are printed on or applied by printing.

Objected to as irrelevant and immaterial.

A. When dark ink, it is necessary to print a size which has adhesive substance, and that is printed over by a plate which forms a border, then gold bronze powder is applied to this newly printed portion, either by hand or machine, and forms a finished product, as the pictures referred to. A gold ink, which has this powder mixed into its substance, can also be printed as a border on or around it, but gives best results only on white paper or light subjects.

Q. 58. From your knowledge and experience of such matters, how would you say the gold borders were applied in the pictures shown in this Osborne Calendar?

Same objection.

A. In this instance, these borders were printed with the size and bronze powder applied to it.

Q. 59. Is that what is termed applying metallic

(Testimony of Gustaf Olson.)

leaf or bronze [405] powder to form the border?

Same objection.

A. It is a bronze powder. Metallic leaf can also be applied, but it is only used in most expensive productions.

Q. 60. Look at this picture on page 46, plate 3034, "The Herring Grounds," and tell us how you consider that that gold border was applied.

A. In the same manner as preceding mentioned, by printing size and dusting bronze powder onto it.

Q. 61. I believe you said the bronze powder could be applied either by hand or by machine. What kind of a machine is used for that purpose?

Same objection.

A. It is what is known as a bronzing machine, into which sheets are run, therein to be dusted by mechanical appliances, with the bronze powder.

Q. 62. Where a border is printed around a color picture to cover up or conceal the overlapping of the colors or other defects, such overlapping or defects, for instance, as shown in this picture on page 12 of the book, "An Old Road in Virginia—Sunset," how far in is it necessary to have the border extend, in order to cover up the imperfections?

The question is objected to as assuming something not shown by the record or by the picture itself, that is, that it has any defects; as the picture referred to is a complete and finished specimen of three-color work.

A. It is usual to have the border lap about one-sixteenth of an inch.



(Testimony of Gustaf Olson.)

Q. 63. Far enough to cover the imperfections, I suppose? A. Yes.

Q. 64. What picture in this book affords a good illustration [406] of the overlapping of the border far enough to cover any objectionable or unfinished edges in the color picture itself?

Objected to as irrelevant and immaterial.

A. Page 38 of the Osborne Art Calendar.

Q. 65. Do you have reference to the picture "When the Frost is on the Pumpkin and the Fodder's in the Shock"? A. Yes.

Q. 66. These two envelopes that I showed you this morning, which showed the border printed from the plate made by you, as you explained, are the envelopes marked Defendant's Exhibit January, 1904, Envelope No. 1 and Envelope No. 2, were they not?

A. Yes.

Q. 67. I believe you are not now in the employ of Mr. Regenstein or the Transo Paper Company; is that correct? A. I am not employed by them.

Cross-examination.

(By Mr. TOWNSEND.)

XQ. 68. If the picture "An Old Road in Virginia," on page 12 of the Osborne Art Calendar, is as defective as you and counsel have stated in Q. 62 and answer, will you state why there is no border of any sort around that picture?

A. In a case of this kind, I refer to pictures in color work for calendars, it is sometimes considered unnecessary to go to further expense of printing a

(Testimony of Gustaf Olson.)

border to cover the defects, and pictures can be sold as they are.

XQ. 69. The so-called defects referred to are more matters of technique, are they not? That is to say, the defect is more apparent to the expert engraver, like yourself, or the maker of such pictures?

A. Not necessarily.

XQ. 70. As a matter of fact, isn't that merely a question of technique? [407]

A. No, because a discriminate buyer would at once reject work showing this defect on catalogue edition and work that is examined closely. In the matter of this calendar, that we mentioned above, as a rule a few hundred go to each buyer only, and such buyer gets a lower price on account of defects if complaint is made, just the same as some men buy a suit of clothes and wear it in spite of its ill-fittings, whereas others would have it made over.

XQ. 71. Did your answer have special reference to the pictures referred to on page 12; or merely to defective work generally?

A. My answer previously mentioned that calendar work being delivered in small lots, they would make a difference as against work put up in catalogues.

XQ. 72. I have been speaking particularly of that picture on page 12.

A. It would also refer to the picture on page 12.

XQ. 73. That is, a technical buyer, willing to pay the price, might have had some sort of a border printed around the picture on page 12; is that correct? A. Yes.

(Testimony of Gustaf Olson.)

XQ. 74. I suppose that in your opinion, the ring around the transparent window of the Transo company's envelope could just as well be omitted, as is the case in that borderless picture on page 12. Is that correct?

A. From what I know about the envelope, it's an improvement to have it on.

XQ. 75. I wish you would look at the picture on page 38 of the Continental Building & Loan Association Calendar, and state whether that picture of itself embodies or suggests the Transo envelope made in one piece with a transparent window portion, and with or without a border around the transparency.

A. In the first place, this green border around this picture, [408] "When the Frost is on the Pumpkin and the Fodder's in the Shock," on the right-hand side and bottom distinctly resembles and is printed in the same manner as the Transo envelope, excepting of course that the color picture is in the center here instead of the oil in the center of the ring of the envelope. I just answered the first portion of the question—the rest I don't understand.

XQ. 76. Question re-read.

A. I don't know what is meant by that—with or without a border.

XQ. 77. I meant, does that picture immediately suggest to your mind a one-piece transparent envelope like the Transo envelope?

A. I think it would, in this way, that if I held up a Transo envelope and looked through it at a landscape, I would see the same combination as we have

(Testimony of Gustaf Olson.)

here in this picture.

XQ. 78. It is in that sense, then, that you think that the picture would suggest the Transo construction?

A. No, not at all. I distinctly referred to the right-hand side and bottom of the picture, where it is overlapped by a green border, forming a dark line around the places mentioned.

XQ. 79. That is, you think that that portion of the border, at the right-hand side and bottom of the picture, on page 38, suggests one element of the Transo construction, that is, the border or ring around the transparency? A. Yes.

XQ. 80. In answer to Q. 29, you say that Mr. Regenstein called you down to the office and instructed you how to make the ring. What were those instructions, as you remember them?

A. He showed me a piece of paper with an oil spot on it, oblong, and requested me to make a ring which would fit half over [409] the white outside, making a ring about one-eighth of an inch wide.

XQ. 81. Was anybody present when those instructions were given you?

A. I don't remember. There may have been a number of persons in the room, because Mr. Regenstein was always busy attending to the work, and the employees had to submit proofs and finished work to him.

XQ. 82. I show you on page 114 of the Osborne Art Calendar two cuts, one of a box of cigars, and the other of a plaid cape, and ask if those are speci-



(Testimony of Gustaf Olson.)

mens of three-color work; and, if so, in what colors each plate is printed?

A. They are specimens of three-color work, and printed with yellow first, red second, and green third.

XQ. 83. Is there any suggestion or showing of a border around the box of cigars referred to?

A. No.

XQ. 84. Is there any suggestion or showing of a border around the outline of the plaid cape referred to?      A. No.

GUSTAF OLSON. [410]

**[Testimony of Max Lau, for Defendant.]**

MAX LAU, a witness produced, sworn and examined on the part of the defendant, in answer to questions by Mr. Banning, deposed and testified as follows:

Q. 1. State your name, age, residence, and occupation.

A. Max Lau; age, 47; 6333 Kenmore Avenue, Chicago, Illinois; Secretary of the American Colortype Company.

Q. 2. Are you acquainted with Mr. Julius Regenstein, here?      A. I am.

Q. 3. How long have you been acquainted with Mr. Regenstein?      A. About sixteen years.

Q. 4. Were you acquainted with a man named George Reese, in his lifetime?      A. I was.

Q. 5. Do you remember of ever seeing Mr. Regenstein and Mr. Reese, or either of them, at work getting up one-piece transparent window envelopes?

Objected to as leading.

(Testimony of Max Lau.)

A. I do.

Q. 6. About when was that, according to your best recollection?

Objected to as no proper foundation laid.

A. It must have been prior to 1904. I happen to recollect the date on account of the fact that we had a strike on in March, 1904.

Q. 7. Who was that strike with, if you remember?

A. With the feeders.

Q. 8. The name of the Union?

A. The Franklin Union.

Q. 9. Who were you associated with in business at the time of that strike?

A. The American Colortype Company.

Q. 10. In what position or capacity?

A. I was third vice-president of the company and general superintendent of the factory.

Q. 11. That was the same company that Mr. Regenstein was connected with, was it? A. The same.

[411]

Q. 12. Who did you see working on these envelopes in any way?

Objected to as indefinite and no proper foundation laid.

A. Well, there was Mr. Regenstein, and a pressman named Sauerman, I don't remember his first name, it's been so many years ago.

Q. 13. Did you see any completed envelopes in those days?

Objected to as no proper foundation laid.

A. I did.

(Testimony of Max Lau.)

Q. 14. Who had them or showed them to you?

A. Why, Mr. Regenstein showed me some, and I also saw him making them.

Q. 15. Please describe the first envelopes that Mr. Regenstein showed you and you saw him making.

Same objection.

A. He made some kind of paper transparent, and he put a very narrow ring around it, what is called a border; and I think it was for the effect to eliminate the running of this oily substance.

Q. 16. You mean that the ring or border was around the transparent portion?      A. It was.

Q. 17. Do you think you would recognize any of those first envelopes if you saw them to-day?

A. I would.

Q. 18. I show you two envelopes, and ask you to look at them and state what they are, if you know.

A. They are the envelopes I saw made at that time. I would say they are the same envelopes, to the best of my recollection. I would not swear that they were the same.

Q. 19. So far as you can see, do you recognize these as either envelopes which you saw in those early days, or like them?      A. They look very much like it.

Q. 20. From examining them, what is your belief as to these envelopes shown you being some that you saw Mr. Regenstein [412] making in those early days?

The question is objected to as calling for the opinion of the witness and not for facts.

A. I should judge they are the same, as he used at

(Testimony of Max Lau.)

that time a very thin paper.

Q. 21. When do you say the strike with the Franklin Union occurred?     A. In March, 1904.

Q. 22. Was it before or after that strike when you say the envelopes that Mr. Regenstein and Mr. Sauer-  
man were making?     A. It was before.

It is admitted by counsel for the parties respectively that the envelopes shown the witness are like the ones offered in evidence as Defendant's Exhibits January, 1904, Envelopes, No. 1, and No. 2.

Cross-examination.

(By Mr. TOWNSEND.)

XQ. 23. When did you first know of this suit?

A. About several weeks ago.

XQ. 24. How did you come to learn about it?

A. Mr. Regenstein told me about it. He called me up by phone.

XQ. 25. What was his purpose in so doing?

A. It happened to come along in some conversation we had in some business matters. [413]

XQ. 26. Did he at that time suggest that it was important to him to establish certain dates?

A. He simply asked me if I happened to remember when he made that envelope.

XQ. 27. What did you tell him?

A. I told him it must have been prior to the strike. That's all I told him.

XQ. 28. At the time you say that this envelope was made and shown you, and prior to the strike, was there much comment about it around the shop?

A. Naturally.



(Testimony of Max Lau.)

XQ. 29. Was it considered something novel and a pretty good thing?

A. Mr. Regenstein thought so.

XQ. 30. What feature did he speak of particularly at that time when he first showed it to you, prior to the strike? Did he refer to the envelope as a whole, or did he call attention to any particular features or advantages?

A. Well, he said if he could make an envelope which would be cheaper than the onion skin pattern, I think it was, it would be a great thing.

XQ. 31. How were those envelopes made, which you have testified about, and which you say were similar to the samples submitted a few minutes ago to you by counsel for defendant?

A. I cannot tell exactly, as I had nothing to do with them. It was Mr. Regenstein's own idea and they worked at it evenings, and Saturdays and Sundays. [414]

XQ. 32. I understood you to say that you saw Mr. Regenstein making these envelopes. That was in answer to Q. 14. What were the steps that you observed Mr. Regenstein taking in making them?

A. He took some paper and run it through the press with some sort of oily preparation. I don't know what it was; and after that he run it through the press once more and put some kind of border around the transparency, in order to finish it off, I think it was.

XQ. 33. Did the envelope come out of the press complete and finished?

(Testimony of Max Lau.)

A. You mean the regular envelope?

XQ. 34. What condition was it in?

A. It was in sheet form.

XQ. 35. What next did he do to complete the envelope?

A. I guess he had them die cut. I never saw him do that.

XQ. 36. That is only your supposition?

A. That's all.

XQ. 37. Then when you say that you saw Mr. Regenstein make these envelopes, you meant to say that you simply saw some paper treated with oil and some sort of a border printed around the oily portion; is that not true?

A. That's true in a certain way, but the sheet was laid out in such a way to make envelopes out of it.

XQ. 38. What do you mean by being "laid out"?

A. What I mean by being laid out is the way we lay any form out for printing purpose. [415]

XQ. 39. Do you mean to say that the sheet was laid out similar to this sheet, Complainant's Exhibit "G" for Identification? A. I do.

XQ. 40. That is, that there were several of these window transparencies with border printed simultaneously, on the one sheet run through the press?

A. Yes.

XQ. 41. So that several envelopes could be cut out from the one printed sheet that you saw at that time? A. I do.

(Testimony of Max Lau.)

Redirect Examination.

(By Mr. BANNING.)

RDQ. 42. Do you remember what kind of a press Mr. Sauerman was using in the printing of the first envelopes or blanks for envelopes that you saw?

A. I think the first press was universal press.

RDQ. 43. What kind of a press is a universal press? A. It is a power press.

RDQ. 44. Is it a large press or a small one?

A. A small press.

RDQ. 45. It is what is called a galley press, is it not?

Objected to as leading.

A. It is a galley type.

RDQ. 46. What kind of a press was used for printing the sheets containing a number of transparent places for the making of a number of envelopes? A. A Miehle press.

RDQ. 47. That is a cylinder press, is it not?

A. It is. [416]

RDQ. 48. Do you remember who operated that cylinder press?

A. It was Mr. Sauerman and Mr. Joe Wein.

RDQ. 49. Didn't Mr. Sauerman operate the universal press and Mr. Wein operate the cylinder press?

Objected to as leading.

A. That's correct.

RDQ. 50. Could the large sheets containing blanks for a number of envelopes be run on the universal press which was operated by Sauerman?

(Testimony of Max Lau.)

Objected to as an attempt to impeach their own witness.

A. No, they cannot run large sheets.

RDQ. 51. Did you see any printing done on the universal press for applying the oil and the border to sheets of paper?

Same objection.

A. If I recollect right, I saw something done on the small press.

RDQ. 52. Which was the press that was called the pony press, if you remember?

Same objection.

A. A small Miehle is commonly called a pony.

RDQ. 53. Without regard to what press the paper was printed on, what do you say as to having seen with Mr. Regenstein and the others, envelopes like those that were shown you, prior to the strike in March, 1904?

Same objection, and also as leading, and also as mere repetition.

A. I didn't see any envelopes of this kind before.

RDQ. 54. What do you mean by your answer?

[417]

A. I mean envelopes made similar to those.

RDQ. 55. Do you mean that you never saw envelopes like those before Mr. Regenstein showed them to you?

Objected to as leading, and not the testimony of the witness.

A. I never did.

RDQ. 56. And when did you see those that Mr.



(Testimony of Max Lau.)

Regenstein showed you?

The question is objected to, as it has already been answered in reply to RDQ. 53.

A. I cannot tell exactly, but it must have been prior to March, 1904.

MAX LAU.

Adjourned until Thursday, December 8, 1910, ten o'clock A. M. [418]

Chicago, Illinois, December 8, 1910.

Parties met pursuant to adjournment. Present as before.

**[Testimony of Alexander B. Sherwood, for Defendant.]**

ALEXANDER B. SHERWOOD, a witness produced, sworn and examined on the part of the defendant, in answer to questions by Mr. Banning, deposed and testified as follows:

Q. 1. State your name, age, residence, and occupation.

A. Alexander B. Sherwood; age, 53 years; 4528 Michigan Avenue, Chicago, Illinois; practical lithographer and president of the Sherwood Lithograph Company.

Q. 2. How long have you been in that business?

A. Thirty-four years.

Q. 3. What kind of work is lithographing work?

A. A method of surface printing, either from stone, zinc, or other surface.

Q. 4. In doing lithographic printing, what is the custom or practice where the picture or design

(Testimony of Alexander B. Sherwood.)

printed has defects or is objectionable in appearance around the edges or margins?

Objected to as irrelevant and immaterial.

A. I understand your question means the outer margin of the picture or design. It is always usual or customary to obliterate any of these ragged margins or inequalities, by covering with a suitable (solid) border to give or make a perfect printing edge for the whole design.

Q. 5. How long has it been customary from your knowledge of the lithographic art to print a border around the outer edges or margins, as you have just explained? [419]

Same objection.

A. Ever since I have been identified with or have had knowledge of the business—thirty-four years.

Q. 6. I show you here a sheet of paper, and ask you to state what kind of work this represents.

A. That is a lithograph label job, done in the usual way on a stone.

Q. 7. This sheet that I have shown you is merely for illustrative purposes, and so I ask you if it shows or illustrates the borders that you have mentioned in your previous answers?

Same objection.

A. It does, very nicely.

Q. 8. What would you say that the borders shown on this sheet were composed of—metallic leaf or bronze powder, if either? A. Bronze powder.

Q. 9. Tell us briefly how bronze powder is applied to make the borders, such as you have been

(Testimony of Alexander B. Sherwood.)

acquainted with and such as are shown on this sheet.

Same objection.

A. The bronze border, as represented on this sheet, is drawn directly on the stone with greasy pigment, called "tousch," or it may be perhaps transferred from other already made designs onto this large sheet in conformity with the colors already printed thereon. The design is then printed in or onto the sheet with an ocher or bronze color; while it is yet fresh in its relation to the paper, it is passed through a bronzing machine suitable for the purpose, the bronze adhering to the wet or printed portion of the design, and in turn the [420] surplus powder is dusted on the other parts of the sheet. The bronzing can also be done by hand in the same manner.

Q. 10. In either case, the result is a border around the picture or design, as shown on this sheet?

A. Yes, sir.

Q. 11. How long, to your knowledge, has it been the custom or practice in the lithographing art, to make or apply the borders, as you have explained?

Objected to as irrelevant and immaterial.

A. Always, for I know of no other method.

Q. 12. What is the purpose or object of applying a border around a picture or design, as you have explained?

Same objection.

A. There are several; the first and primary object being that it covers up the inaccuracies of the register of colors where they are brought out to the

(Testimony of Alexander B. Sherwood.)

edges of the design; second, it is often economical, rather than to take up the artist's time or the transferrer's time, or the plate maker's time, in trying to do it by the other method, which would be one full of technical hard possibilities; third, it adds perhaps to the artistic appearance of the design. There are other minor reasons, perhaps, but these are the principal ones.

Q. 13. I notice, on a part of this sheet, two designs with the words "Holman's Perfume, Holman, Chicago," printed on them, which do not have a border printed around them. Please look at those two particular designs, and state whether or not they illustrate the unfinished appearance around the outer [421] edge or margin that you have mentioned.

A. They do, sir, very well.

By Mr. BANNING.—Defendant's counsel offers in evidence, the portion of the sheet shown to the witness, containing the two particular "perfume" designs referred to in the last question, and asks to have the same marked "Defendant's Exhibit Illustration of Lithographic Work."

By Mr. TOWNSEND.—The receipt in evidence of the exhibit just offered is objected to as irrelevant and immaterial.

Q. 14. Have you any knowledge of the use of borders in the printing art generally, or distinct from the lithographic work?

A. Yes, sir. The method in each kind of business is practically the same, and the result obtained, so far as that particular feature goes, is the same.



(Testimony of Alexander B. Sherwood.)

Q. 15. How long have you known of the use of borders by printers, for either covering up unsightly edges or margins on the work being done, or for giving definition or sharpness of outline to the work included in the border, or for other purposes?

Objected to as leading; also as irrelevant and immaterial with relation to the art of making transparent window envelopes.

A. It has always been the practical and common method of handling such work; to my knowledge for thirty-four years. [422]

Q. 16. If you had been printing a work or design or picture of any kind, for, say, the last thirty years, and you found that the ink or colors or whatever was used ran or spread, so as to create an objectionable or unsightly outer edge or margin, what, in the exercise of your knowledge of the lithographing and printing arts, would you have immediately done to cover up or obliterate such objectionable outer edges or margins of the work?

Objected to as indefinite, and irrelevant and immaterial.

A. The first thought that would occur to me, both from the economical and practical standpoints, would be to make a border which was sufficiently wide and solid to cover over and obliterate these unsightly edges, either by printing in a stronger color itself than the colors underlying, or by finishing with a bronze border, as on the sheet here before me.

Q. 17. What would you say as to its requiring any

(Testimony of Alexander B. Sherwood.)

invention on your part, or on the part of any other printer, to print a border in such a case?

Objected to as no proper foundation laid; as indefinite, and as calling for the opinion of the witness and for a legal conclusion.

A. The question appears ridiculous to me, for the proposition as you state it is so self-evident to any practical man that there could be no question about his being foolish enough, in view of that being the only way to get over the difficulty, and which is commonly and universally known.

Q. 18. By "foolish enough," you mean simple enough? A. Yes, sir. [423]

Q. 19. Are you in any way financially interested in the result of this litigation? A. No, sir.

By Mr. TOWNSEND.—No cross-examination.

(Sgd.) ALEXANDER B. SHERWOOD.

[**Testimony of Emil A. Le Gros, for Defendant.**]

EMIL A. LE GROS, a witness produced, sworn, and examined on the part of the defendant, in answer to questions by Mr Banning, deposed and testified as follows:

Q. 1. State your name, age, residence, and occupation.

A. Emil A. Le Gros; age, 36; 3943 W. Ohio Street, Chicago, Illinois; I am the vice-president of the Franklin Company, and manage the engraving end of the business.

Q. 2. How long have you been acquainted with the engraving business, and the printing business?

(Testimony of Emil A. Le Gros.)

A. About twenty-one years.

Q. 3. In the engraving and printing business, what is the practice or custom, when a picture or piece of work of any kind shows defective, ragged, or unsightly edges or margins, to cover up or obliterate or conceal such unsightly or objectionable edges?

Objected to as leading; furthermore as irrelevant and immaterial.

A. It is customary to print a border of some kind around the picture.

Q. 4. How long have you known of such custom or practice in the engraving and printing arts?  
[424]

A. As long as I have been in the business.

Q. 5. From the knowledge and experience, what would a printer or engraver naturally have done if the work in hand showed a defective or unsightly appearance around the edges?

Objected to as indefinite, and irrelevant and immaterial.

A. Print a border around it.

Q. 6. Has that been the case, to your knowledge, for, say, the last fifteen or twenty years?

A. It has.

Q. 7. What have you to say, from your knowledge and experience, as to whether or not the printing of a border around the work would have involved any invention?

Objected to as leading; as no proper foundation laid, and as calling for the opinion of the witness and usurping the function of the Court.

(Testimony of Emil A. Le Gros.)

A. I shouldn't think it would be considered an invention, because it has been used in the regular course of business right along.

Q. 8. I show you a book that has been offered in evidence as "Osborne Art Calendar for 1900," and ask you to look at it and state, if you can, about how long you have been acquainted with the Osborne Art Calendars similar to the one shown you.

A. I have been familiar with work of this character for about twelve years.

Q. 9. Are you financially interested in any way in the result of this litigation? [425]

A. I am not.

By Mr. TOWNSEND.—No cross-examination.

(Sgd.) EMIL A. LE GROS.

**[Testimony of Adolph G. Voss, for Defendant.]**

ADOLPH G. VOSS, a witness produced, sworn, and examined on the part of the defendant, in answer to questions by Mr. Banning, deposed and testified as follows:

Q. 1. Please state your name, age, residence and occupation.

A. Adolph G. Voss; age, 37; 1037 Dakin Street, Chicago, Illinois; office manager of American Colortype Company.

Q. 2. How long have you been connected with the American Colortype Company?

A. Since it was organized on March 1, 1902.

Q. 3. Are you acquainted with Mr. Julius Regenstein here present? A. I am.



(Testimony of Adolph G. Voss.)

Q. 4. How long have you known him?

A. Since January, 1899.

Q. 5. What position did you hold or occupy with the American Colortype Company during the early years after it was organized in 1902?

A. Cashier.

Q. 6. How long were you cashier?

A. I am still cashier, as well as office manager.

Q. 7. Do you know one Joseph Wien and one Ernest W. Sauerman?      A. I do. [426]

Q. 8. When did you get acquainted with them?

A. They were both with the company at the time of the incorporation.

Q. 9. If you remember, please tell us what position or work Wien and Sauerman did while they were with the American Colortype Company.

A. Mr. Wien was in charge of the proofing-room, Mr. Sauerman being his assistant.

Q. 10. What kind of a press did Wien and Sauerman use in the proofing-room, if you remember?

A. One pony Miehle, and several Gordon and universal presses.

Q. 11. Did you ever see either Sauerman or Wien printing paper with any oil or oily preparation to make portions of it transparent?

Objected to as leading, and no proper foundation laid.

A. I did.

Q. 12. In what room was that?

Same objection.

(Testimony of Adolph G. Voss.)

A. In the proofing-room.

Q. 13. You may state the fact as to whether or not you saw any paper printed by Wien or Sauerman, with transparent portions, provided with a ring or border around said portions.

Same objection.

A. I did.

Q. 14. Where did you see such paper with the transparent portions and the ring or border?

A. In the proofing-room. [427]

Q. 15. Which one printed the paper, with the transparent portions and the border around them, if you know?

Same objection.

A. Mr. Wien.

Q. 16. Did you see him printing the paper and borders?

Same objection.

A. I did.

Q. 17. On which press was he doing the work?

A. On the pony press.

Q. 18. That was a cylinder press, was it?

A. It was.

Q. 19. How did you come to observe the work that he was doing?

A. I had occasion to walk through the proofing-room, and my attention was attracted to the peculiar shape of a plate which was on the pony press at the time, and I asked Mr. Wien what the nature of the work was that he was doing. He explained to me

(Testimony of Adolph G. Voss.)

that he was printing transparent envelopes for Mr. Regenstein.

Q. 20. What peculiarities attracted your attention to the plate?

A. It was an entirely different makeup to the plates being used for our regular product.

Q. 21. If you remember, please state how many or about how many transparent portions were made on the paper that you saw Wien printing and talked with him about, as you have explained.

Objected to as leading, and no proper foundation laid. [428]

A. My recollection is that the group consisted of probably three or four.

Q. 22. You mean three or four transparent portions on the same sheet and made with the same impression of the press? A. I do.

Q. 23. What was the general shape or form of these transparent portions?

A. They were oval, about one inch high by I should say four and a half inches long.

Q. 24. How was the border printed around the transparent portions on the sheet of paper?

Objected to for lack of proper foundation.

A. By the use of the plate above mentioned, its purpose having been explained to me as aforesaid by Mr. Wien.

Q. 25. Please look at these envelopes that I now show you, and state how far, if at all, they show transparent portions and rings or borders around them, such as you saw Mr. Wien printing on the paper,

(Testimony of Adolph G. Voss.)

with the pony cylinder press.

Objected to as leading, and no proper foundation laid.

A. The oval and the printed ring are similar in all respects to those that I saw Mr. Wien printing at the time.

I move that the answer be struck out, as being the opinion of the witness; and no proper foundation laid. [429]

Q. 26. Tell us, as nearly as you can, when it was that you saw Wien printing the paper with the transparent portions and the rings or borders around such portions, as you have explained.

A. During the latter part of February or the early part of March, 1904.

Q. 27. How are you able to fix the date that you have given?

A. During the latter part of March, 1904, we had a strike, for which Mr. Wien was largely or rather indirectly the cause. During the early part of March, Mr. Wien made application to join a certain union. The union to which Wien belonged at the time, however, objected, taking the stand that he was not far enough advanced to join the higher union. In order to demonstrate that he had both the experience and ability he was at that time transferred to our press-room to act as a pressman. This act caused a dispute between the two unions, which culminated in the strike above mentioned.

Q. 28. If you remember, please state the names of those two unions.



(Testimony of Adolph G. Voss.)

A. The Franklin Union of Feeders, and the Pressmen's Union.

Q. 29. Where were the two rooms in which Wien worked—the proofing-room and the press-room—located with reference to each other?

A. The proofing-room was situated on the main floor in the north end of the building; and the press-room in the south end of the building, specially erected for it. [430]

Q. 30. In which of these rooms was it that you saw Wien printing the paper with the transparent portions and borders, as you have explained?

A. In the proofing-room.

Q. 31. Was it before or was it after the transfer from the one room to the other, as you have mentioned, that you saw Wien printing the paper, as you have explained? A. Before.

Q. 32. How definitely was the strike with the Franklin Union impressed on your mind?

A. It was the only strike of moment that our company has experienced, and I was called upon to serve notices of an injunction that our company had taken out, at the homes of several of such of our employees who were on strike.

Cross-examination.

(By Mr. TOWNSEND.)

XQ. 33. Please look at those two envelopes which counsel handed you, and interrogated you about, and state what there is about those two envelopes that you can identify them as the ones you saw printed

(Testimony of Adolph G. Voss.)

back in February or March, 1904.

A. By the transparent center and the printed border.

XQ. 34. Are those the same ones that you saw then?

A. I cannot say. The ones that I saw were in the form of a sheet, not yet die-cut.

XQ. 35. How did you know that that sheet was for the purpose of being made into an envelope or envelopes?

A. I was so informed by Mr. Wien. [431]

XQ. 36. Just what did Mr. Wien tell you, in so informing you?

A. He told me in substance that the printing was being done for a transparent envelope for Mr. Regenstein.

XQ. 37. Did he call your particular attention to the border?

A. It was the plate with which this border was being printed that led me to ask Mr. Wien what the work was for, and he then informed me, as above stated.

XQ. 38. Was the press running at that time?

A. I couldn't say.

XQ. 39. How big was the plate?

A. I should say possibly fifteen or eighteen inches square.

XQ. 40. How many rings were there on it?

A. As stated before, it consisted of a group containing probably three or four.

XQ. 41. What do you mean by a group?

(Testimony of Adolph G. Voss.)

A. A plate containing the three or four hollow ovals, such as were used for printing of the border of this transparent envelope.

XQ. 42. How were these hollow ovals grouped?

A. My recollection is that there were two rows of two each.

XQ. 43. Arranged one oval above another in each row, so that there were two ovals abreast of each other? A. I couldn't say.

XQ. 44. I am only seeking to see what the arrangement of these ovals were in these rows. Were the ovals arranged in pairs of each other, or alternating?  
[432]

A. Further than saying that there were three or four ovals on this plate, I do not know.

XQ. 45. Then, what did you mean by saying that they were arranged in two rows, two in each row?

A. Because this would be the natural position, to my mind, if four were being used.

XQ. 46. Then, you were only guessing that they were arranged in that way?

A. I have stated before, that my recollection was that it was a plate containing a group of these ovals; and I am not in a position to state definitely the actual number, or how these ovals were arranged on the plate.

XQ. 47. Then, you would not swear that the testimony you have already given, to the effect that these ovals were arranged in two rows, one above the other, is correct? Your former testimony must be either correct or incorrect; then, which is it?

(Testimony of Adolph G. Voss.)

A. I have testified that my recollection was that these ovals were arranged on the plate as outlined above.

XQ. 48. You have given two outlines above: In answer to XQ. 42, you said: "My recollection is that there were two rows of two each." And in answer to XQ. 44 you said: "Further than saying that there were three or four ovals on this plate, I do not know." Now, both of those answers cannot be correct. Which is correct, if either, or have you another explanation to make?

A. The last one is correct.

XQ. 49. Then, you do not know how these ovals were grouped? [433] A. Not positively.

XQ. 50. You either know or you do not know, as knowledge is a positive thing; and I merely ask you if you want your answer to stand that you do not know how those groups were arranged on that plate?

A. I do.

XQ. 51. What color of ink was used on the plate?

A. I do not recall.

XQ. 52. What did Mr. Wien say further about these envelopes, or the plate he was working with, as to the scheme of getting up envelopes of that sort?

A. Nothing, that I remember.

XQ. 53. Did you see any actual sheets printed at that time, when you were talking with Mr. Wien?

A. I did.

XQ. 54. How was the transparency made on those sheets? A. I don't know.

XQ. 55. Didn't Mr. Wien explain that to you?



(Testimony of Adolph G. Voss.)

A. He did not.

XQ. 56. Did you ask him about it?

A. I did not.

XQ. 57. Did you notice the transparency at that time? A. I did.

XQ. 58. But if it hadn't been for the border, or the plate with the group of rings on it, you wouldn't have noticed the job otherwise, I suppose?

A. Exactly.

XQ. 59. When did you say you saw this plate with the rings? [434]

A. The latter part of February or the early part of March, 1904.

XQ. 60. Why do you fix on the latter part of February, 1904, or the early part of March?

A. Because Mr. Wien, as explained before, was transferred from the proofing-room to the press-room, along the middle of March of that year.

XQ. 61. I believe you stated that in the early part of March, Mr. Wien made application to join a certain Union. What Union was that?

A. The Pressmen's Union.

XQ. 62. You are positive as to that date?

A. I am.

XQ. 63. Did any other employees in the shop make application at the same time, for membership in that Union? A. Not to my knowledge.

XQ. 64. Where was the office situated in the building?

A. On the first floor, east of the proofing-room.

XQ. 65. At which end of the building?

(Testimony of Adolph G. Voss.)

A. North end. It was in the northeast corner of the building.

XQ. 66. Are you on intimate terms with Mr. Wien?

A. I haven't seen him for about four years.

XQ. 67. Were you on intimate terms with him when he was there in the proofing-room in 1904?

A. I had just a casual acquaintanceship with him.

XQ. 68. When did you first know that you were to be a witness in this case?

A. About noon to-day. [435]

XQ. 69. Who informed you that you were desired as a witness? A. Mr. Regenstein.

XQ. 70. What did Mr. Regenstein say when he asked you to be a witness here this afternoon?

A. He asked me whether I was willing to tell what I knew as to the printing of his envelope.

XQ. 71. Was it suggested in any way that it was desirable to establish certain dates?

A. He asked me whether I recalled the time, or about the time, that he was having experimental work done on his transparent envelope; and he gave me some idea as to what the information was for.

XQ. 72. What did he say the information was for?

A. He explained that one of his customers had been sued for using an envelope which he—Mr. Regenstein—had sold to him.

XQ. 73. I do not suppose any reference was made to the strike of 1904 during this conversation; but that you have simply referred to it or recalled it dur-

(Testimony of Adolph G. Voss.)

ing the course of your examination here, for the purpose of fixing these dates; is that correct?

A. While the question of the strike may have come up, it was entirely unnecessary, as the circumstances as related by me are perfectly clear, both as to the dates and facts stated above.

XQ. 74. So that your reference here, in the testimony, to the strike, as the determining factor in fixing these dates, has been purely spontaneous and voluntary? A. Perfectly so. [436]

XQ. 75. And I suppose the same is true with regard to the date of application for membership in the Pressmen's Union by Mr. Wien?

A. Perfectly so.

XQ. 76. Those two dates, of the strike and of Mr. Wien's application for membership in the Pressmen's Union, are indelibly impressed upon your mind, are they? A. Absolutely.

XQ. 77. Do you recall the year and month of the San Francisco earthquake and fire?

A. The month was April, and the year either 1905 or '06.

Redirect Examination.

(By Mr. BANNING.)

RDQ. 78. I believe, in answering a question, or rather in considering and discussing the meaning of the question, a few moments ago, you said something about not being positive, within a week or two, as to the exact date when Wien made his application for membership in the Pressmen's Union, but this was not taken on the record. Did I understand you

(Testimony of Adolph G. Voss.)

correctly, as to this matter?

A. What I meant to say was that I could not specify the actual date that Wien made his application, but that he did apply for membership some time between February 1st or previously, and March 10th, 1904.

I move that the answer be struck out as not responsive to the question, and as inconsistent with his previous testimony.

RDQ. 79. There was something said off of the record on the matter mentioned in my last question, was there not? [437]

A. As to the period of his making application?

RDQ. 80. Yes, the exact date? A. There was.

(Sgd.) ADOLPH G. VOSS.

It is admitted by counsel for the parties respectively that the envelopes shown to the witness Voss, and about which he was questioned, are duplicates of the envelopes offered in evidence as Defendant's Exhibits January, 1904, Envelopes No. 1 and No. 2. [438]

[**Testimony of George A. Behrens, for Defendant.**]

GEORGE A. BEHRENS, a witness produced, sworn, and examined on the part of the defendant, in answer to questions by Mr. Banning, deposed and testified as follows:

Q. 1. State your name, age, residence and occupation.

A. George A. Behrens; age, 28; residence, 1416 Farwell Avenue, Chicago, Illinois; salesman.



(Testimony of George A. Behrens.)

Q. 2. Are you acquainted with Mr. Julius Regenstein here present?     A. Yes.

Q. 3. How long have you known Mr. Regenstein?

A. About eight years.

Q. 4. Did you ever work for any company under Mr. Regenstein?     A. Yes.

Q. 5. What company was that?

A. The American Colortype Company.

Q. 6. What did you do while working for the American Colortype Company, as you have said, while under Mr. Regenstein?

A. I was Mr. Regenstein's assistant.

Q. 7. When did you leave the employ of the American Colortype Company, if you did leave its employ?

A. The latter part of May, 1904.

Q. 8. While working for the American Colortype Company, were you acquainted with Ernest W. Saurman, and Joseph Wien?     A. Yes, I was.

Q. 9. Do you remember where they worked?

A. Yes, I do.     In the proof-room.

Q. 10. What kind of presses did they use in their work, if you remember?     [439]

A. Universal presses and Miehle presses.

Q. 11. The Miehle press, I believe, was a cylinder press, was it?

Objected to as leading.

A. Yes, it was.

Q. 12. Which one worked with the cylinder press, and which one with the universal press, if you remember?

A. Joe Wien worked with the cylinder press; Er-

(Testimony of George A. Behrens.)

nest Sauerman worked with the Universal press.

Q. 13. How large was that Miehle cylinder press, if you remember?

A. It was one of their smallest sizes, called the pony press.

Q. 14. While Sauerman was working with the Universal press, and Wien with the cylinder press, what, if anything, do you remember of seeing, in the way of papers or envelopes provided with transparent portions, and with rings or borders around such portions?

Objected to as leading, and no proper foundation laid.

A. I remember having seen Ernest Sauerman print transparent portions, as well as a border printed around this transparent portion, at various times, about five or six months prior to my leaving the American Colortype Company.

Q. 15. Which press did Sauerman do this printing on? A. The Universal press.

Q. 16. Did Sauerman or anybody else tell you what the paper was intended for that was printed with the transparent portions and the border around such portions? [440]

A. Ernest Sauerman told me that they were being printed for Mr. Regenstein personally.

Q. 17. While you were still with the American Colortype Company, did Wien remain or work all the time in the proofing-room? A. No, he did not.

Q. 18. Where else did he work?

A. He worked in our large press-room.

(Testimony of George A. Behrens.)

Q. 19. Do you remember about when he was transferred from the proof-room to the press-room?

A. He was transferred to the press-room just prior to a strike we had in 1904.

Q. 20. Was that the strike with the Franklin Union No. 4, that I asked you about a few moments ago, in the other room?

A. That was prior to the strike with the Franklin Union No. 4, that you asked me about.

Q. 21. What caused that strike, if you know?

Objected to as irrelevant and immaterial.

A. I don't know the exact cause.

Q. 22. After the strike was declared, how were matters around the place of the American Colortype Company—serene and quiet, or the contrary?

Same objection.

A. There was naturally more or less trouble.

Q. 23. Look at these two envelopes that I show you, and tell us how the transparent portions and the rings or borders on them resemble those that you saw Sauerman printing on the Universal press, if at all?  
[441]

Objected to as leading, and no proper foundation laid.

A. They resemble them generally. They look a good deal like those I saw at that time.

Q. 24. You may also state whether or not you saw Wien print any paper with transparent portions and borders around them, on the cylinder press.

Objected to as leading, and no proper foundation laid.

(Testimony of George A. Behrens.)

A. I don't remember having seen him print any.

Q. 25. For whom are you employed now?

A. American Colortype Company.

Q. 26. After leaving the American Colortype Company, about the latter part of May, 1904, for whom did you go to work during that summer?

A. I didn't work that summer.

Cross-examination.

(By Mr. TOWNSEND.)

XQ. 27. How long have you been employed in your present capacity as salesman for the American Colortype Company?

A. I have been employed, for the last five years, by the American Colortype Company, the last two years as salesman.

XQ. 28. And how employed during the preceding three years of the five?

A. I looked after the manufacturing end of the business.

XQ. 29. What month and year was it that you went with them this last time? [442]

A. February, 1906.

XQ. 30. Previous to February, 1906, where were you employed, if employed?

A. On the "Milwaukee Sentinel" newspaper.

XQ. 31. In what capacity?

A. Assistant in the circulation department.

XQ. 32. How long were you employed there?

A. About five months.

XQ. 33. Prior to that, where were you employed, if you were working?



(Testimony of George A. Behrens.)

A. On the "St. Louis Star," St. Louis.

XQ. 34. In what capacity?

A. Assistant in the circulation department.

XQ. 35. How long were you there?

A. A trifle over one year.

XQ. 36. Prior to that, what were you doing?

A. Prior to that I wasn't working.

XQ. 37. How long were you not working?

A. About three months.

XQ. 38. I suppose prior to that you were with the American Colortype Company with Mr. Regenstein?

A. Yes, sir.

XQ. 39. Just what were your duties under Mr. Regenstein?

A. Looking after the manufacture, seeing that jobs would get out on time.

XQ. 40. Was all your time spent in and about the shops? A. Yes, it was.

XQ. 41. Just what were the circumstances [443] surrounding your first acquaintance with these transparent envelopes and transparent paper that you testified about? That is, where you were at the time and what was said in regard to them, and who was present?

A. During my duties in following up the various jobs around the factory, I naturally came in touch with all departments of the business, and which led me into the proof-room several times each day. The first time I saw the prints referred to, I do not remember of any conversation taking place, but I looked at them very carefully, for the reason that

(Testimony of George A. Behrens.)

they were something entirely new from what I had seen done in our factory up to this time.

XQ. 42. You had never seen any work of that sort done before that? A. No, I had not.

XQ. 43. Regarding this work that you saw at that time, how was the paper prepared or printed? I would ask you to testify from your recollection, and not from any assistance that you might receive from the two envelopes which you hold in your hand and about which defendant's counsel has interrogated you.

A. It was printed singly on a Universal press.

XQ. 44. What do you mean by singly?

A. Merely one transparent portion or border.

XQ. 45. That is, one envelope at a time?

A. The transparent part of one envelope at a time.

XQ. 46. What was the shape of the envelope printed?

A. It was merely a square sheet of paper.

XQ. 47. And each one of these square sheets had a single transparency; is that right? [444]

A. That is right.

XQ. 48. Did you know then how the transparency was made?

A. I knew that it was made by printing an oily portion on the paper.

XQ. 49. Did you know how the border was applied?

A. The border was applied by printing with a dark color from a zinc plate or electrotype plate.

XQ. 50. Were those that you saw with borders all

(Testimony of George A. Behrens.)

of a dark color?     A. I don't remember.

XQ. 51. Do you know whether the border and the oily potion were applied to the sheet at the same time or at different times?     A. At different times.

XQ. 52. Do you know on which side of the sheet they were applied—whether on the same side or on opposite sides?     A. I don't remember.

Redirect Examination.

(By Mr. BANNING.)

RDQ. 53. Mr. Behrens, I believe your father was one of the proprietors of the American Colortype Company while Mr. Regenstein was there?

A. Yes, sir, he was.

(Sgd.) GEO. A. BEHRENS. [445]

It is admitted by counsel for the parties respectively that the envelopes shown to the witness Behrens, and about which he was questioned, are duplicates of the envelopes offered in evidence as Defendant's Exhibits January, 1904, Envelopes No. 1 and No. 2.

Adjourned until Friday, December 9, 1910, 10 o'clock A. M.

Chicago, Illinois, December 9, 1910.

Parties met pursuant to adjournment. Present as before.

**[Testimony of Oscar W. Bond, for Defendant.]**

OSCAR W. BOND, a witness produced, sworn, and examined on the part of the defendant, in answer to questions by Mr. Banning, deposed and testified as follows:

(Testimony of Oscar W. Bond.)

Q. 1. State your name, age, residence and occupation.

A. Oscar W. Bond; age 64 years; 6325 Monroe Avenue, Chicago, Illinois; patent soliciting and mechanical expert in patent causes.

Q. 2. Please state what training and experience you have had, in the soliciting of patents, the study and examination of patented structures, machines, devices, etc., and the testifying as an expert in patent causes, that qualifies you to give testimony as an expert, involving the comparison of patents one with another, and structures of various kinds, with the drawings, descriptions and claims of patents. [446]

A. I have been engaged as a patent solicitor for nearly forty years. During the time I have been engaged in soliciting patents, I have prepared and prosecuted several thousand applications for patents on various devices, machines, apparatus, and mechanical structures. The preparation of the papers for the applications for the patents necessitated my becoming familiar with the construction and operation of the devices and structures to which the inventions related, and this was necessary in order that I would have a clear understanding of the invention. The prosecution of the applications in the Patent Office, in almost every instance, required me to examine prior patents, relating to the same art to which the invention belonged, and have a clear understanding of the devices and structures of such prior patents, in order to differentiate the inventions of the applications from the inventions of such prior patents, so



(Testimony of Oscar W. Bond.)

that I could properly differentiate the invention and draw claims properly covering the new features found in the applications, over what was disclosed in the prior patents. I have made several hundred examinations in the Patent Office, of both U. S. patents and foreign patents, for determining the patentability of a device or other structure, and for the purposes of preparing a defense in patent causes. In this manner I have become familiar with patents and the mechanical arts generally. I have testified in a number of patent causes, as an expert, my experience as an expert extending over a period of thirty years. [447]

#### THE FIRST COHN PATENT SUED ON.

Q. 3. Please look at the Cohn patent sued on, No. 835,850, of November 13, 1906, applied for November 8, 1904, for improvements in envelopes, which, for convenience, I will hereafter refer to as the first Cohn patent, since it was the first one applied for of the two Cohn patents sued on, and state whether you have studied the patent, so as to understand the thing or article that is described and claimed in said patent.

A. I have studied the patent referred to in the question, and understand the construction of the article shown and described therein.

Q. 4. Please tell us, in your own language, what you understand to be the thing or article described and claimed in this first Cohn patent.

The question is objected to, since the patent itself

(Testimony of Oscar W. Bond.)

is the best evidence of its contents and legal effect and scope.

A. The thing or article shown and described in this first Cohn patent is an envelope, of that type having in its face or address side a transparent portion of limited area, around which is placed a border of an opaque character, which border can be a narrow rim, or can be the entire surface of the envelope outside of the transparent section thereof.

Q. 5. What is your understanding as to the purpose or object of the border that you have referred to, as gathered from a study of the patent itself?

Same objection.

A. It appears, from the specifications of the patent, that the transparent portion or section of the envelope is produced by the use of a compound or preparation having [448] more or less of an oil therein. It is well known that paper treated with an oily substance or material will result in having the material spread more or less, producing, around the edges of that portion of the paper to which the transparent material is applied, more or less of a ragged appearance, which is unsightly. It is for the purpose of blotting out this ragged edge that the border, no matter of what character, is made around the transparent portion or section of the envelope.

Q. 6. How many pieces of paper are employed by Cohn in making the envelope of his first patent?

A. A single piece of paper is employed, having the transparent section or portion on the front of the envelope, with the balance of the paper cut into

(Testimony of Oscar W. Bond.)

proper shape, so as to form, when folded, an ordinary envelope, with a transparent portion or section on the front or address side thereof.

Q. 7. Is the envelope of the first Cohn patent what may be properly termed a one-piece window envelope?     A. Yes.

Q. 8. Please look at the patent to J. S. Brown, No. 36,393, of September 9, 1862, and state whatever you find the fact to be as to the kind of envelope shown and described in such patent.

A. This Brown patent shows and describes an envelope in which a section or portion thereof is made transparent, and the transparent section or portion is large enough so as to clearly show through it the address of a card or other article placed within the envelope. The transparent portion of the envelope or wrapper is so made by the use of suitable means or substances, [449] in the process of manufacturing the paper for the envelope, that will furnish a transparent section or portion, with the remainder of the envelope or wrapper opaque. The envelope is of the single variety or type of envelopes having a transparent section or portion in its front or address face.

Q. 9. What is the difference between the envelope shown and described in this Brown 1862 patent and the envelope shown and described in this first Cohn patent sued on?

The question is objected to, as the two patents are the best evidence of the differences.

A. The only difference is the addition, in the Cohn patent, of the border around the transparent section

(Testimony of Oscar W. Bond.)

or portion of the envelope, which border is lacking in the Brown envelope.

Q. 10. I call your attention to two envelopes, that have been offered in evidence as Defendant's Exhibit January, 1904, Envelopes No. 1 and No. 2, and ask you to examine them and compare them with the envelope shown, described and claimed in this first Cohn patent sued on, and give us your opinion as to the substantial identity or otherwise of these two envelopes shown you, with the envelope shown, described and claimed in the Cohn patent.

Objected to as leading.

A. I have examined the two envelopes referred to in the question. Both envelopes are single-piece transparent window envelopes, and each of them has a transparent section or portion made in the front or address side of the envelope, by the use of some material or compound of a nature to give the transparent effect. Both envelopes correspond, in respect to having a [450] transparent section or portion, to the envelope shown and described in the first Cohn patent.

The envelope No. 1 has the transparent section or portion surrounded by a border of an opaque nature, but light in color; while the envelope No. 2 has the transparent section or portion surrounded by a border of a darker nature than the border of envelope No. 1. Both envelopes have the transparent section or portion surrounded by a narrow border of an opaque nature, which border serves to hide or blot out to a greater or less extent, the ragged edge pro-



(Testimony of Oscar W. Bond.)

duced by making the transparent section or portion of each envelope. Both envelopes have a border corresponding to and for the same purpose as the narrow border used in making the envelope of the first Cohn patent, and the border in the two envelopes surrounds the transparent portion the same as the border does in the first Cohn patent.

The envelopes No. 1 and No. 2, in my opinion, are identical, in their nature, with the envelope of the first Cohn patent, as both of them have a transparent section or portion which is surrounded by a border of a more opaque nature than the portion of the envelope having the transparent section or part.

Q. 11. From your study of these old envelopes, what do you find as to the office or function performed by the border or ring surrounding the transparent portion of the envelopes?

A. The evident office or function of the encircling border around the opaque section or part is for the purpose of blotting out or obliterating the ragged edge produced in making the transparent section or part of the envelope, which ragged [451] edge is due to the tendency of the material or compound used in giving the transparent effect to run or spread in the paper around the edges of the transparent section or part.

Q. 12. State what your opinion may be as to the existence of any difference between these old envelopes under consideration and the envelope of the first Cohn patent, which, from your experience as a patent solicitor and with patents, could afford any

(Testimony of Oscar W. Bond.)

ground for novelty, invention, or patentability in the envelope of the first Cohn patent over these old envelopes.

The question is objected to as ambiguous; and also for lack of proper foundation.

A. There is no sufficient difference, in my opinion, between the envelope of the first Cohn patent and the two old envelopes, which would give novelty and patentability for the Cohn envelope over the two old envelopes.

Q. 13. State your opinion, whatever it may be, as to whether or not the envelope of the first Cohn patent and these old envelopes embody or exhibit one and the same invention, if invention be attributable to the one who first provided a one-piece transparent window envelope with a ring or border around the transparent section or portion.

A. The envelope of the first Cohn patent and the two old envelopes embody, in my opinion, the same invention.

Q. 14. I will ask you to assume that it has been shown, by the evidence of witnesses already examined on the part of the defendant, that it has been the common practise and custom, for at least fifteen or twenty years, in the printing art, to print borders around the edges of various [452] kinds of work, to cover up imperfections in the edges of the work, as shown, for example, in the Defendant's Exhibit Illustration of Printers' Border, and in the printing of three-color pictures, as shown, for illustration, in this book which I now show you, offered in evidence

(Testimony of Oscar W. Bond.)

as Defendant's Exhibit Osborne Art Calendar for 1900; and in the printing of lithographic work, as shown, for example, in the exhibit offered in evidence as Defendant's Exhibit Illustration of Lithographic Work, and to give us your opinion, whatever it may be, as to whether or not any invention, or anything more than the knowledge and skill of a printer in the practise of his calling or art, is involved in the printing of a border or ring around the transparent section or portion of an envelope, to cover up or conceal the running, bleeding or spreading of the oil into the texture of the paper, so as to cause ragged or unsightly edges, as shown and described in the envelope of this first Cohn patent sued on, giving your reasons for any opinion you may express.

Objected to as leading; no proper foundation laid; and calling for the mere opinion of the witness.

A. The Defendant's Exhibit Illustration of Printers' Border shows an example where a border is used around an exposed portion, printed in red or orange, in which the black border serves the purpose of concealing or obliterating the ragged edge, which would appear around the red or orange portion if the black border were not present. This illustration clearly shows the use of a border, by means of which the ragged edge of the part or [453] portion inclosed within the border is concealed or obliterated, thereby giving more definition to the part within the border, and giving the edge a perfect appearance instead of a ragged or imperfect appearance.

The Defendant's Exhibit Osborne Art Calendar

(Testimony of Oscar W. Bond.)

for 1900 contains various illustrations of color work enclosed within a surrounding border. One of the illustrations is found on page 7, "Tales of Chivalry." Another illustration is found on page 38, "When the Frost is on the Pumpkin and the Fodder's in the Shock."

Both of these illustrations show the beneficial advantages and effects of using a border around a picture, for the purpose of more clearly defining the picture, and hiding or obliterating any overrun of colors, or ragged edges produced in printing the picture.

Other illustrations, showing the use of a border in connection with lithographic work, are found on page 20, "The Bride and the Fortune-teller"; page 32, "A Florentine Girl"; page 35, "A Safe Refuge"; and there are many other illustrations in the book, showing the use of a border.

The book also contains numerous illustrations in which the border is omitted and which show the beneficial effects and advantages of using a border for concealing any imperfections around the edges of the print. For instance, on page 8, "A Connoisseur," no border is used, and the edge shows, in places, an overrun of the red color; on page 12, "Knickerbocker Times"; and on the same page, "An Old Road in Virginia—Sunset," the prints show the effects of an edge having an overrun of color, which, in one case is yellow and in the other case, the Sunset, it is both yellow [454] and red. Numerous other instances might be pointed out, as that on page 17, opposite



(Testimony of Oscar W. Bond.)

page 16, "Among the Lilies," which shows to a very marked degree the bad effects of not using a border around the picture, the edges showing a red line at the top and bottom, and in the lower right-hand corner, which is entirely out of the edges of the picture, and would be concealed or obliterated if a border were used, as in the illustrations pointed out by me as having borders.

The Defendant's Exhibit Illustration of Lithographic Work shows a sheet having thereon various designs. Nearly all of the designs are inclosed within a border or ring, so as to bring out more forcibly the design, and at the same time obliterate any defect around the edges of the design in making the print.

This Exhibit Illustration of Lithographic Work is an excellent one in showing the beneficial effects and advantages of using the border around the design, as it contains two designs in which the border is omitted and which show the ill effects of the omissions, in that the edge of these two designs appear ragged and uneven. The designs referred to have, on the face, "Holman's Perfume, Holman, Chicago," and are found in the third row from the bottom of the sheet, and are the second and third designs from the left hand of the sheet. No better illustration of the effects and advantages from the use of a border around a design can be found than by comparing the designs having a border with the two designs without the border.

The evident purpose of using a border, in the ex-

(Testimony of Oscar W. Bond.)

hibits to which I have referred, is the same purpose as using a border around a transparent portion of an envelope; [455] and this purpose is obliterating or concealing or blotting out any ragged edge or imperfection of an edge around an illustration or design.

In my opinion, in view of the use, in the printing art, of a border encircling the design, picture or illustration, and serving the purpose of concealing, obliterating or blotting out ragged or imperfect edges, the use of a border or ring around a transparent section or part of an envelope would not involve invention, as it would be nothing more than the use of an old means for covering up or concealing the running, bleeding, or spreading of a material, so as to cause ragged or unsightly edges. It would not require invention, but only the employment of the skill of a printer, to use a border or ring around a transparent section or part of an envelope, in view of the old use, in printing, of a border or ring around the edge of an illustration, picture, or design, for the same purpose, of covering up or obliterating a ragged edge produced in printing, and corresponding to the ragged edge produced by the use of an oily compound or material in making a transparency.

The use of a border or ring around the transparent section or part of an envelope is analogous to and the same as the use of a border or ring around a picture, illustration, or design, in printing, and is for the same purpose—that of concealing ragged or imperfect edges; and, therefore, the use of a border or

(Testimony of Oscar W. Bond.)

ring around a transparent window in an envelope lacks invention, in my opinion.

Recess. [456]

Q. 15. I believe that, in the instances or examples of the printing of borders that you discussed in your last answer, the design, or picture, or work, and the border surrounding the same, were printed on the same side of the paper. What effect, if any, would this circumstance have, in your opinion, on the question as to whether invention or patentability were involved in the making of the envelope of the first Cohn patent sued on?

The question is objected to as being the testimony of counsel and not of the witness; that the question is leading; and that there has been no proper foundation laid; and calling for the mere opinion of the witness.

A. None whatever. The printing of the border on the outside is for the purpose of covering up or obliterating ragged edges and imperfections, which is the same purpose as contemplated by the border of the envelope of the first Cohn patent.

Furthermore, the specification of this first Cohn patent states:

“Usually, and perhaps preferably, the preparation and coloring matter are applied on opposite sides of the blank, the preparation on the inside and the coloring on the outside.”

It is clear from this statement that while Cohn preferred to apply the coloring matter and the preparation, as noted in the statement, it was not the

(Testimony of Oscar W. Bond.)

intention to confine the application to the inside for the preparation and the outside for the coloring matter, but to make the application as might be most convenient, using the coloring matter on the inside if desired, as well as the preparation. [457]

Q. 16. Do you find anything in the claim of this first Cohn patent which restricts the application of the coloring matter or border to the one side of the paper or the other, in your opinion?

Objected to as leading; and furthermore that the claim is the best evidence of its legal effect and scope.

A. There is nothing in the claim that in any way limits or restricts the application of the coloring matter to the inside or the outside of the paper.

Q. 17. I call your attention to the Tudor reissue patent, No. 8,514, of December 3, 1878; the Jacobson patent, No. 369,059, of August 30, 1887; the Eneas patent, No. 752,537, of February 16, 1904; the Johnson British patent, No. 1,119 of 1861; the Peace British patent, No. 5,823, of 1884; the Hole British patent, No. 746, of 1894; the Pescheux & Paulet British patent, No. 2,339, of 1894; the Leigh British patent, No. 21,711, of 1894; the Watts British patent, No. 7,955, of 1895; and the Smith & Browne British patent, No. 25,532, of 1901, and ask you to state what you may find disclosed in said patents, as to the use of borders around various things and kinds of work, and the object for which the borders are used in such patents. In considering each patent, you may state the bearing which you may consider that it has upon the question of the novelty of the



(Testimony of Oscar W. Bond.)

envelope of this first Cohn patent, or anything contained in it.

The question is objected to as leading; as no proper foundation laid; as indefinite; as irrelevant and immaterial to the art involved [458] in this suit; that the patents are the best evidence of their contents, mutual bearing and relevancy; and on the further ground that the U. S. patents referred to in the foregoing question have not been noticed to the complainant, as required by section 4920 of the Revised Statutes.

#### THE TUDOR 1878 PATENT.

A. The Tudor reissue patent relates to improvement in Ornamented Window Glass. The stated object of the invention is the production of ornamental designs, chiefly from paper, and imitating stained glass set in metallic sashes.

The invention consists in paper having opaque lines printed, painted, or stained thereon, resembling the outlines of leaden sash bars usually employed in the construction of stained glass windows, and applying transparent coloring to the spaces between the opaque lines, by printing, painting, or staining. It is stated that when the paper so prepared is oiled or coated, and filled in the pores with resinous substances, as by varnishing, it becomes, in the colored portions, more or less transparent and presents the pleasing effect of stained glass of the usual construction.

Plain paper, such as lithographic or writing paper, may be used, but paper more transparent is prefer-

(Testimony of Oscar W. Bond.)

able in carrying out the invention. It is also stated that the opaque lines and coloring may be applied on one or both sides of the paper. The prepared sheet of paper, after it is finished, can be applied to the glass, so as to be removable, or so as to be permanent. [459]

The drawing, forming part of the Tudor reissue patent, illustrates one form of carrying out the invention, and the opaque lines are indicated by the reference letters *b*, and the transparent colored spaces or figures are represented by the letter *c* on the drawing.

This Tudor reissue patent shows and describes a sheet of paper having thereon opaque lines with transparent spaces between the lines, and it is evident that the opaque lines present the transparent spaces with a clean edge and without any ragged appearance. One method of producing the transparent sections is by the use of a stain, and a stain usually is a liquid which penetrates or passes through any substance to which it is applied, and would naturally diffuse itself more or less if applied to paper so as to present a ragged and imperfect edge. Such an edge would be obscured or covered up by the opaque lines of the design.

Considering the invention of this Tudor reissue patent with the invention of the Cohn first patent, there is found, in both, the use of paper which can be more or less opaque, or more or less transparent, as may be preferred. The paper, in both cases, has formed therein transparent spaces or sections, made

(Testimony of Oscar W. Bond.)

so by the use of some suitable transparent material or compound. The transparent spaces or sections, in both inventions, are surrounded by an opaque border, so as to obscure or cover any rough edge or imperfections there may be on the outline of the transparent face or section.

It will thus be seen that the Tudor reissue patent is for a design made out of paper and having transparent [460] spaces with a border or ring of an opaque nature, being in this respect the same as the paper of the Cohn first patent, with its transparent space or section surrounded by an opaque border or ring.

The same novelty that is found in the Cohn patent, of a transparent section, with a border or ring of an opaque nature, is also found in this Tudor reissue patent.

#### THE JACOBSON 1877 PATENT.

The Jacobson patent relates to improvement in transparencies, and has for its object the production, at a moderate cost, of a transparency that can be used in place of stained glass or photographic transparencies.

The transparency of the Jacobson invention is composed of two or more copies of the same print or picture, on paper or any other suitable medium, rendered transparent and matched or registered together for the different copies to exactly coincide, and all of them together afford sufficient strength to the picture when viewed by transmitted light.

(Testimony of Oscar W. Bond.)

In making the colored transparency in accordance with the Jacobson invention, two or more copies of the design are carefully printed by any suitable or usual process of color printing, preferably using a somewhat soft and thick paper and making as strong a print as practicable. After which the paper or basis for the transparency is rendered transparent by filling or saturating its fiber with an oil or wax in any suitable or usual manner, as, for example, by dipping it in melted paraffine. It is stated that the paper, when so treated, becomes translucent, so that, when a sufficient number of layers of the same are viewed in transmitted light, they give, in the uncolored parts, the effect [461] of white or opalescent glass, and, in the colored parts, the effect of a clear stained glass of the same color.

It is also stated that lines, to indicate the leading of the window, may be printed onto the design in black, which would, as a matter of course, furnish an opaque border around the space inclosed within the lines of the opaque border.

The drawing, forming a part of the Jacobson patent, shows, in Figure 1, the complete transparency, and, in Fig. 3, a face view of one of the copies of the design. It is to be noted that, in Fig. 1, the design is brought out in better relief than in Fig. 3, owing to the use of two or more sheets like Fig. 3, superimposed one on the other, as intended by Jacobson.

It is evident that the black lines in Fig. 1 will furnish an opaque border around the spaces shown



(Testimony of Oscar W. Bond.)

in white within the black lines, which spaces are transparent.

The invention of this Jacobson patent discloses the use of paper, portions of which are rendered transparent, and such portions or spaces are inclosed within border lines of an opaque nature, with the result of producing a transparent surface of different colors, with the transparent spaces separated and made clearly defined by the use of opaque border lines.

Considering what is disclosed in this Jacobson patent with what is found in the Cohn first patent, it is seen that, in both patents, paper is used as the basis of the device; that, in both, transparent spaces or sections are made in the paper; and that, in both, the transparent spaces are defined and made perfect by the use of opaque lines. It is self-evident [462] that if the material or compound employed by Jacobson was of a nature to form ragged edges or an imperfect edge, the defect would be cured by using the opaque lines, corresponding in this respect to the use of an opaque border ring, as in the first Cohn patent.

It seems to me that any novelty existing in the Cohn first patent, for a transparent space made in a sheet of paper, with a border or ring of an opaque nature, is likewise found in the Jacobson patent.

#### THE ENEAS 1904 PATENT.

This Eneas patent relates to inclosing devices, such as wrappers or the like.

The wrapper or inclosing device of the Eneas pat-

(Testimony of Oscar W. Bond.)

ent is one in which a transparent panel, preferably of a sheet of flexible material, is employed for the purpose of observing the opposing portion of the book, back of the panel.

It is stated that the transparent panel may be secured to the cover body in any manner suited to the substances employed, preferably by cementing or stitching the overlapping faces of the panel to the wrapper. One form of attachment for the panel to the body of the wrapper utilizes the overlapping edges of the book cover as a reinforcing strip for the panel to reinforce and strengthen the edges thereof. Another form of making this attachment of the panel to the body of the wrapper employs additional reinforcing strips, secured over the edges of the cover, or, if desired, the panel may terminate at the reinforcing strips, so that the latter will bind and protect the panel edge from [463] injury. The construction of using an additional reinforcing strip is shown in Fig. 1 of the drawing, and is represented by the reference letter *d*, and this strip *d* surrounds the edges of the transparent panel *c*, and forms, in effect, a border or ring, which would serve to define the outline of the panel, and would cover up any rough edge, if the panel had such an edge.

Considering this device of the Eneas patent with the device of the Cohn first patent, both may be properly termed wrappers. The transparent sections or parts of the Eneas wrapper is not formed with the body of the wrapper; while in the Cohn first patent the transparent part is a unity with the

(Testimony of Oscar W. Bond.)

wrapper. The transparent space or part in both wrappers is surrounded by a border, which serves to define the outline of the transparent panel, and serves to cover up or obscure any rough edge which may be on the transparent panel.

### THE JOHNSON 1861 BRITISH PATENT.

This Johnson British Patent relates to show boards or tickets; and the stated object of the invention is to produce a show or window tablet which shall be visible both by day and night and present the appearance of stained glass.

According to the specification, the required design is printed in colors, by lithographic, typographic, or other means, upon paper, cotton, silk, or other material. The material so printed is then rendered transparent, by varnish, gum, size, or other suitable medium. The finished tablets may be used as produced, or they may be placed loosely behind glass, or applied to the glass, and be made to adhere thereto by means of varnish, gum, or other transparent adhesive material. [464]

It is stated that after the required design has been printed, upon paper or other suitable material, in colors,—some of the colors being printed twice or oftener—in order to give the required solidity to more closely imitate stained glass when finished—and for this purpose, that is, imitating stained glass, a boundary line is formed around the edges of all the letters or other parts of the design, by printing in size or other adhesive material and applying metal-

(Testimony of Oscar W. Bond.)

lic leaf or bronze powder thereto, so as to imitate what is termed the "leading" in stained glasswork. It is stated that this "leading" effect may be produced, by printing the boundary lines or "leading" in any very opaque color or substance.

This Johnson British patent discloses a device of a transparent nature; that is, one having transparent spaces or sections in colors, and these transparent spaces or sections are inclosed with a boundary line or border, applied by printing the same in any opaque color or substance, so as to inclose the transparent space or section; and the material used for producing the transparency is paper, among other things.

Considering this Johnson British Patent, and the device disclosed therein, with the device of the first Cohn patent, it is seen that both employ paper in the production of the device; that both form, in the paper, transparent sections or spaces; and that both employ a border or ring inclosing the transparent space or section, so as to more clearly define the same; and it is evident that if an oily [465] compound or material were used in carrying out the Johnson invention, for printing or making the transparent space or spaces, in such case the border line of an opaque nature, such as used by Johnson, would serve to obscure or cover up any rough edge or imperfect edge produced by the use of the material for making the transparent space or section.

It seems to me that any novelty which is found in the device of the Cohn first patent, as to the use of a



(Testimony of Oscar W. Bond.)

transparent space or section formed in the paper, with a border or ring of an opaque nature, is likewise found in the device of the Johnson British Patent.

Adjourned until Saturday, December 10, 1910, ten o'clock A. M.

Chicago, Illinois, December 10, 1910.

Parties met pursuant to adjournment. Present as before.

(Answer continued:)

THE PEACE 1884 BRITISH PATENT.

This Peace British Patent relates to improvements in cases or wrappers for needles, fish-hooks, and other similar articles.

The object of the invention is to allow needles and other similar articles to be seen without exposing the articles to the deleterious action of the atmosphere. The invention is carried out by the application of transparent or diaphanous material, such as talc, gelatine, or other similar suitable [466] material, the preference being materials that are elastic, though nonelastic materials, such as glass, may be used, if desired.

It is stated that preferably the transparent material is applied to the front side only of the case or wrapper, and the application is in such manner as to leave a strip or border of the paper, or other substance of which the case or wrapper is made, around the edges of the transparent material, forming a frame, which may be either left plain or may be ornamental.

(Testimony of Oscar W. Bond.)

The drawing, Fig. 1, shows a construction in which A is the transparent material; B, the front of the wrapper, and around the transparent material is a border, by which the edges of the transparent material will be covered or obscured, so as not to present any ragged edge for the transparent section or part of the wrapper. The remaining figures of the drawings show, in each instance, a border C, surrounding the transparent material, and by which the edges of the transparent material are covered or concealed.

This Peace British Patent discloses a wrapper having, in its front face, a transparent section or part, which, however, is not an integral part of the material from which the wrapper is made. The patent also discloses the use of a border surrounding the transparent window, or portion of the wrapper which serves to cover and conceal the edges of the transparent material.

Considering this Peace British Patent in connection with the Cohn first patent, the wrapper of both patents has a transparent section or window, formed in one case of a separate piece, as in the Peace patent, and in the other case formed as an integral part of the material, as in the Cohn patent. [467] The window or transparent section, in both cases, has the edges of the transparent section surrounded by a border, which in the British patent is the wrapper itself, and in the Cohn patent is a coloring substance; but in both cases the border serves to bring out the contour of the transparent section or window

(Testimony of Oscar W. Bond.)

and to conceal any imperfections or roughness for the edges of the transparent section or window.

The novelty of covering or obscuring the edges of a transparent section or window, in a wrapper, is found in the Peace British Patent, the same as in the Cohn first patent, but attained by a border of a different character than the border printed around the transparent section of the envelope of the Cohn first patent.

#### THE HOLE 1894 BRITISH PATENT.

The invention of this Hole British Patent relates to an improved Coin Bag.

The object of the invention is to construct a coin bag in such manner that the contents can be ascertained by a glance. The coin bag, in order to carry out the object of the invention, is made of paper or other suitable material which is perforated by punching or otherwise making holes on one or all sides, which holes are located at any desirable distances apart, and are of a size so that the smallest coin cannot fall through the holes.

It is stated that, by reason of the perforations, the nature of the contents of the bag can be easily and quickly ascertained, and if necessary the observation can be aided by using black or other colored lines on the exterior of the bag, which would form a relief to the color of the coins the bag contained.

[468]

The drawings accompanying this Hole British patent show a construction in which the holes are

(Testimony of Oscar W. Bond.)

indicated by the reference letters *b*, and the defining lines in black are represented by the reference letter *c*, and these lines extend across the face of the wrapper and surround the perforations. This Hole British Patent shows the use of black or other lines around an opening or perforation, for the purpose of more clearly defining the outline of the holes or perforations.

Considering what is disclosed in this Hole British patent with what is disclosed in the Cohn first patent, both patents utilize a border or a line by which the outline of the opening in the wrapper is more clearly brought out and defined.

#### THE PESCHEUX AND PAULET 1894 BRITISH PATENT.

This Pescheux and Paulet British Patent relates to improvements in Pattern Cards, for displaying and illustrating the effect of dress material.

The object of the invention is to provide means for illustrating, upon reduced scale models, the general effect and sample material or pattern would have when made up into garments when worn upon the person.

The invention is carried out by using a sheet of transparent material, such as glass, mica, celluloid, gelatine, or any other suitable transparent substance, and printing or otherwise depicting thereon a figure. For example, a man or woman dressed in garments of any required or fashionable style, and showing the beautiful shading where desirable, as



(Testimony of Oscar W. Bond.)

usual in ordinary tailors' pattern cards. Such parts of the figure which are not to be dressed or covered with the [469] material of the clothing, such as the head, hands, feet, etc., are blocked out with any suitable colors, preferably a more or less natural representation, and any other extraneous matter may be shown, but is to be similarly blocked out. It is stated:

"The whole of the remaining part of the sheet is covered with opaque or nontransparent material, such as gold or other metallic leaf, colour, or the like, so that the shaded costume of the human figure alone remains transparent."

The drawings, forming part of this British patent, show in Fig. 1 the outline of a lady in riding habit and mounted upon a horse, and in Fig. 2 the outline of a gentleman dressed in a suit of clothes of approved style. The description of these figures states:

"These figures are suitably shaded in black or any dark tint as shown so as to show off the costume. The diagonal lines covering the faces, gloves, collars, boots, etc., indicate that those parts are not transparent but are suitably coloured upon the sheet A. The horse in Fig. 1 or any other added matter is similarly coloured or rendered nontransparent. The rest of the sheet is blocked out with colour or material of suitable opacity as indicated by the horizontal lines. Thus the only parts of the sheet left transparent are those parts of the human figure

(Testimony of Oscar W. Bond.)

which are to be covered with the clothing of the sample material to be illustrated thereupon."

It is also provided that, instead of using a transparent material, a solid and nontransparent sheet may be used, cutting away only such part or parts as required for the human figure, and covering the space or spaces thus formed with transparent material, on which the figure is depicted.

The figure to be displayed is transparent, and is shown in the drawings by the portions which are left entirely white. This Pescheux and Paulet patent illustrates and described a sheet, preferably of transparent material, on which the figure to be illustrated is blocked out and defined by [470] a transparent section or part surrounded by a border or frame of opaque material, so as to clearly define and bring out the outlines of the figure against which the material for the garment is to be displayed.

Considering the invention and its novelty, as found in this Pescheux and Paulet British Patent, with the invention and novelty disclosed in the Cohn first patent, the British patent has therein the invention and novelty of the Cohn first patent, in that it has a sheet of transparent material, with such portions thereof as are not wanted for the design made opaque, so as to clearly define and bring out the outline of the figure desired, corresponding in this respect to the use of an opaque material around the transparent section or portion, as found in the Cohn first patent. Both patents show the use of an opaque border, for the purpose of bringing out more definitely and

(Testimony of Oscar W. Bond.)

clearly the outlines of the transparent section or part of the sheet, and in both the border of opaque material serves as a means for covering up or obscuring any irregularities or imperfections of the transparent portion, around the edges of such portion.

### THE LEIGH 1894 BRITISH PATENT.

The invention of this Leigh 1894 British Patent relates to an improved device for exhibiting and setting off dress material.

The object of the invention is to show to the eye how a given dress material will look when it is made up and worn. The object of the invention is attained by means of a portable sheet having marked thereon the outline of the human figure, or some portion of it, which outline, as concerns the [471] head, neck, hands and feet, is preferably finished in color, and the balance of the sheet, outside of the said outline, is opaque, with the surface within the outline transparent, and lightly lined and shaded to indicate buttons, pockets, and the like, and to show up the contour. The device is used by laying it on the material.

It is stated that the material from which the device is made must be naturally transparent, or at any rate capable of being made transparent, and celluloid is mentioned as a material which would meet all the requirements of the invention, for which reason the device is preferably made of celluloid, though any material may be used which is suitable for the purpose of the invention.

It appears, from the description and drawings of this Leigh British Patent, that the sheet is divided

(Testimony of Oscar W. Bond.)

into two portions, one of which, indicated by the reference letter *a*, is transparent, and the other portion of which, indicated by the reference letter *b*, is opaque. This opacity is represented in the drawing by the black portion of the sheet of drawings, and the transparent portion is shown by the white section of the drawings. It is stated in the specification that preferably the opacity of the sheet of material shall be secured without dullness of color, and for that reason the sheet outside of the transparent outline is covered with a gold color, which is laid on the back of the sheet.

It is stated that the portion of the sheet presenting the outline of the figure shall be transparent, and, if celluloid is used, the necessary transparency is already there; but if, on the other hand, "the material of the sheet is [472] opaque normally, such within portion *c* must be made transparent." It is also stated that care should be taken, when the opaque portion and the transparent portions are of distinct material, that they are easily and well joined along the outline.

This Leigh British Patent discloses the employment of a sheet which can be entirely of a transparent material, having portions made opaque, so as to clearly present an outline of a transparent nature; or the sheet may be of an opaque character and the transparent section produced thereon, so as to present the required outline in a transparent form or section.

Considering this Leigh British Patent in connec-



(Testimony of Oscar W. Bond.)

tion with the novelty of the Cohn first patent, it is found that in both there is a section or part which is made transparent; that in both this transparent section or part is inclosed within an opaque border; that in both the opaque border serves to bring out and define the outline of the transparent section or part of the sheet; and that, if the transparent section of an opaque sheet used in the Leigh British patent was made by the use of a compound or material which would tend to spread and form a ragged edge, such edge would be obscured or concealed by the opaque portion of the sheet surrounding the transparent section or part.

It, therefore, seems to me that the same novelty exists in this Leigh British patent as found in the Cohn first patent, as regards a transparent section with a surrounding border or portion of an opaque nature.

#### THE WATTS 1895 BRITISH PATENT.

This Watts British Patent relates to the packing or making up of tobacco or other goods in packets, cases, [473] cannisters, or the like.

The object of the invention is to enable the goods inside the package, case, or wrapper, to be visible from the outside.

The invention is illustrated by drawings, and the first four figures of the drawings illustrate the wrapper A, having a hole or opening B, behind which is placed a sheet C of gelatine, celluloid, or other suitable transparent, or semi-transparent material, by which a window is formed in the packet, enabling the

(Testimony of Oscar W. Bond.)

contents to be examined without opening the package itself. Fig. 5 illustrates the invention in connection with a cardboard box or case. Fig. 6 illustrates the invention applied to a cigar-case. Figs. 7 and 8 illustrate the invention in connection with tin boxes. In all cases, however, an opening is formed in the body of the casing, which opening is closed by a sheet of gelatine, or other suitable material, applied back of the opening, so as to form a window for inspecting the contents.

This Watts British Patent discloses the use of a transparent section or window surrounded by opaque material, through which transparent section or window anything there behind is visible. The outline of the transparent section or window is defined and made clear by the surrounding opaque material.

Considering the novelty disclosed in this British patent with the novelty of the Cohn first patent, it is found that in both a wrapper is employed having a transparent section or window, and in both the transparent section or window is outlined and defined by the use of an opaque material surrounding the section or window. [474]

#### THE SMITH & BROWNE 1901 BRITISH PATENT.

The invention of this Smith & Browne British Patent relates to a combined opaque and transparent tablet, poster, label, ticket or sign, for advertising purposes, and for displaying public notices.

The invention consists of printing, or applying on paper by hand or mechanical means, a black ink or

(Testimony of Oscar W. Bond.)

color, or inks and colors, on the reverse or negative surface of the aforesaid paper, to that surface on which the advertisement or public notice is printed and displayed.

The specific purpose of rendering opaque and dense certain and predetermined parts of the advertisement or public notice, by printing or applying the black ink or color, is to enable certain other and predetermined parts to be made transparent by means of spirit varnish, and these transparent parts are exposed or left unprotected, owing to the absence of the colored portions, as the ink or colors are not printed or applied to the predetermined transparent part of the reverse or negative surface of the aforesaid paper, to that surface on which the advertisement or public notice is printed and displayed.

It is stated that the application of the spirit varnish is for the specific purpose of rendering transparent only such parts of the advertising matter as desired and intended to show and become brilliant when the paper on which is printed or displayed the advertising matter is placed before artificial light.

This Smith & Browne patent discloses the employment of a sheet of paper, certain parts of which are rendered [475] transparent, and the remaining parts of which are rendered opaque by the use of an opaque material, such as black ink or color, the resultant effect being a sheet of paper having a transparent section or part surrounded by an opaque material, by which the transparent section or part will be defined and clearly pointed out, and undoubtedly

(Testimony of Oscar W. Bond.)

the black ink or color employed around the transparent section or part would serve to cover up or obscure any ragged edge of the transparent section or part made by the use of the spirit varnish employed for obtaining a transparent effect.

Considering the novelty disclosed in this Smith & Browne British Patent with the novelty of the first Cohn patent, it is found that in both a sheet of paper is employed; that in both a section or part of the sheet of paper is rendered transparent by the use of a proper compound or material; that in both other parts of the sheet of paper surrounding the transparent section or part is rendered opaque by printing or applying on the paper a black ink or color, or inks and color; and that in both the transparent section or part is defined and made pronounced, and any ragged edge of the transparent part would be obscured or covered up by the opaque part or border surrounding such transparent section or part.

Q. 18. I notice that the copy of this Leigh 1894 British Patent, in the upper right-hand corner of the first page, has apparently a rubber stamp applied thereto, containing the words "No Patent Granted on This Application." Do you know anything about the origin or purpose of those words stamped on the copy before you? [476]

Objected to on the ground that the patent paper referred to is the best evidence of its contents, and that the question calls for a construction of the British Patent Act; and the mere legal conclusion of the witness.



(Testimony of Oscar W. Bond.)

A. I do not. I do know, however, that a copy of this patent, on file in the Public Library of Chicago, does not have thereon an imprint of any nature whatever. I personally examined the bound volume of British patents, containing a copy of this Leigh patent, and the copy in such bound volume is just the same as the first page of the copy before me, without the stamped statement found on the upper right-hand corner.

I move that all that part of the answer, after the first three words, "I do not," be struck out as not responsive to the question.

Q. 19. I believe you made the examination in the Public Library of this city that you refer to, at my request, to see whether or not the stencil mark, or whatever it is, on this printed copy before you, was also on the copy in the Public Library?

The question is objected to, if it is designed to impeach the authenticity of the Leigh patent paper referred to. The understanding was, between counsel of the parties, that uncertified printed Patent Office copies distributed by the Patent Office in this [477] or other countries might be received in evidence as though certified. I will, therefore, ask counsel if this Leigh paper is such a paper as was printed and distributed by the British Office.

Counsel for complainant has a similar copy, similarly stamped, received from the British Patent Office. If this copy, referred to by counsel for defendant, is an authentic publication, then any evidence that might be elicited by the question as pro-

(Testimony of Oscar W. Bond.)

pounded, or by similar questions, is beside the issue.

By Mr. BANNING.—Defendant's counsel states that the copy of the Leigh patent offered in evidence is such a printed copy as is printed and distributed by the British Patent Office, and that when he received the copy shown to the witness it contained the stencil or stamp on it with the words quoted in the question to the witness; that in order to ascertain whether all copies printed and distributed by the Patent Office contained such stamp or words, he requested the witness, when he turned over the patents to him, for his study and preparation to testify as a witness, to examine the printed copy of such patent as contained in the Public [478] Library, at Chicago, to see whether it contained a similar stencil or stamp; that he is not in any way endeavoring to impeach or question the authenticity of the Leigh patent, but simply desired to have all the light thrown on the matter that was available; and that he considers the stencil or stamp now appearing on the printed copy as of no materiality or importance, as such words could not in any way, that he sees, militate against the printed copy of the patent as a publication.

A. Yes, I made the examination referred to, at your request.

Q. 20. About how long, to your knowledge, have printed copies of British patents been received by and exhibited at the Public Library in Chicago, for the examination of the public, or any one that might desire to see them; and how long have you been in

(Testimony of Oscar W. Bond.)

the habit of examining them there?

Objected to as irrelevant and immaterial.

A. I could not say positively how long back copies of British patents have been received and placed on file for examination of the public, at the Library in Chicago. To the best of my recollection, I examined British patents at the Library in Chicago, as early as 1875, at least. I have examined copies of these British patents nearly every year, from the time of my first examination up to the present time, both here in the Library and in the Patent Office in Washington. [479]

Q. 21. From your examination of British patents, in the Public Library of Chicago, about how long after such patents are issued in Great Britain, have you found them on file and ready for examination by the public in Chicago?

Same objection.

A. I have no direct knowledge as to how late or how soon after the bound volumes are produced in Great Britain that such volumes are received in Chicago. I do know that I have asked for and received printed volumes for the first of the year within four months thereafter. That is to say, I have asked for printed volumes, say in April or May, for an issue of British patents in January or February of the same year, and have obtained the volumes.

Q. 22. From your experience in obtaining the printed copies of English patents in the Public Library here, for about how long, in your opinion, has the printed copy of this Leigh British 1894 Patent

(Testimony of Oscar W. Bond.)

been available for examination in the Public Library of Chicago?

Same objection; and furthermore as no proper foundation laid.

A. I would say as early as September, 1895.

Recess.

Q. 23. Referring to Figure 2 of the first Cohn patent, what do you understand is represented by the numeral 2, and what represented by the white surface or portion of the envelope outside of the diamond-shaped figure in which the numeral is placed? [480]

Objected to, as the patent is the best evidence of what it illustrates and describes.

A. The numeral 2, as I understand it, represents that portion of the face of the envelope having or embracing the transparent section or window. The white surface which surrounds this transparent portion or window indicates that the body of the envelope, outside of the transparent portion or window, is opaque, and made so by being imprinted or colored so as to give definition to the window opening and obliterate signs of creep from the transparency-producing preparation.

Q. 24. In Fig. 2, what part do you understand is to be considered or can be described as the border?

A. All that portion or face of the envelope lying outside of the lines defining the diamond-shaped transparent section or portion of the window, which portion extends to the edges of the envelope on all four sides.



(Testimony of Oscar W. Bond.)

Q. 25. Do you mean to be understood as considering that the border of this first Cohn patent may cover the entire face of the envelope, with the exception of the transparent window? A. Yes.

Q. 26. If you see anything in the specification which leads you to such an understanding, please refer to it, and quote the same in your answer.

A. The specification, in describing Figure 2, states:  
[481]

“Fig. 2 represents an envelop with a different shaped opening from that of Fig. 1 and in which the entire face of the envelope around the window is assumed to have been imprinted or colored to give definition to the window opening and obliterate signs of ‘creep’ in the transparency-producing preparation.”

Again, in speaking of the manner of applying the color matter, it is stated, in column 2 of the specification, line 73, as follows:

“This coloring matter may be applied solid over the face of the envelope around the window, as in Fig. 2.”

Q. 27. If the paper composing the face of the envelope be entirely covered with opaqueing or coloring matter, “applied solid,” to use the words of the specification of the first Cohn patent, with the exception of the transparent section or window, in what respect, in principle, would there be any difference in such paper, in your opinion, over the paper when paper be used, shown in the drawing in this Leigh 1894 patent, for example?

(Testimony of Oscar W. Bond.)

Objected to as leading; that the evidence shows that there was no such patent ever issued; and as it is immaterial and irrelevant to any of the issues in the present case.

A. No difference in principle whatever.

Q. 28. In my last question, I referred to the Leigh patent as an illustration or example merely. You may make your answer applicable to other patents discussed by you, as well, or such of them as may serve to illustrate the matter under inquiry.

A. In addition to the Leigh British patent, referred to in the preceding question, the Pescheux and Paulet patent shows a transparent section or portion, with [482] the remainder of the sheet rendered opaque by color matter.

By Mr. TOWNSEND.—I move that the answer be struck out, as the Pescheux and Paulet patent obviously bears no relation to the envelope art as represented by the patents in suit.

Q. 29. If the border around the transparent window of the first Cohn patent be in the form of a narrow ring, as shown, for example, in Figure 1 of the patent, in what respect, in principle, would there be any difference in such paper, in your opinion, over the paper shown in the Tudor and various other of the patents that you have considered and discussed?

Objected to as incompetent, irrelevant, and immaterial.

A. No difference whatever in having the transparent section or window surrounded by a defining border or ring.

(Testimony of Oscar W. Bond.)

Q. 30. If we take this Tudor patent, for instance, and stain the spaces between the heavy black lines, as described in the specification of such patent, what would there be to cover up or conceal the meeting edges of the different colored stains in adjacent spaces, or to define or give definition to the several spaces?

The question is objected to as assuming something not apparent from the record; as involving a hypothetical reconstruction of the Tudor patent; and furthermore as irrelevant and immaterial to any of the questions here involved. [483]

A. The opaque lines by which the to-be colored spaces are divided off and separated one from the other; the to-be colored spaces being the spaces in white on the drawing of the Tudor patent.

Q. 31. In view of the old and common practice in the printing art, for printers to print borders around their work, where they thought them desirable, to cover and conceal any running of the ink, or unsightly edges, and to give a finished appearance to their work, to which I called your attention yesterday; in the color picture printing art, to cover and obliterate irregular or objectionable edges, due to the careless making or registration of the color plates, or the overlapping of the colors in printing, or from other causes, and to give beauty of finish to the pictures, to which I called your attention yesterday; in the lithograph printing art, to conceal and cover irregular and ragged edges, and give definition of outline to the inclosed picture or label, and ornamental

(Testimony of Oscar W. Bond.)

finish to the same, to which I called your attention yesterday; and in the use of printed borders, as disclosed in the patents you have considered and discussed, applied to many articles, to give definite outline to desired portions or spaces, and to cover and conceal whatever might otherwise appear on or through the paper, where the borders were printed or placed; not to specifically mention or consider the use of borders to cover ragged or unsightly edges, such as the borders printed around pictures in almost any illustrated book, the borders or "mats" around photographs and framed pictures, the borders around the edges of wallpaper as applied to rooms, the borders or "casings" around the windows of houses, and other common uses of borders, of which a court [484] may be presumed to take judicial notice; what, in your opinion, based on your thirty years or more of experience with patents and inventions, was the character of the act which Cohn performed when he printed a border around the transparent portion of a piece of paper intended to form the transparent window of an envelope, to obliterate or conceal the effects or tendencies of the oil to creep into the surrounding paper, in view of the Brown 1862 patent, which discloses, as I understood you to say, while discussing it, a one-piece transparent window envelope, but without a border printed around the transparent window?

The question is objected to for multifariousness as involving an aggregate of questions; as leading; as calling for the opinion of the witness in a variety of



(Testimony of Oscar W. Bond.)

arts totally and wholly unrelated to one another, and in which arts the witness has shown no qualification entitling his opinion to weight; and furthermore, if the question is segregated into its many parts and branches, still all of these parts and their answers to them, singly or collectively, are irrelevant and immaterial.

A. In view of the Brown 1862 patent, which discloses a one-piece transparent window envelope, not inclosed within a border, the placing or printing of a border of opaque nature around such transparent window would be, in my [485] opinion, the natural act of a printer or anyone familiar with the printing or placing of a border around a picture or any other representation, for the purpose of more clearly defining and bringing out the representation, and concealing any defects there might be around the edges of the picture, design, or illustration. It would be nothing more than the act of a skilled operator familiar with the practice in similar cases, and not arising to the dignity of invention, as it would be done without the employment of any inventive skill. It would belong to the same category of work as that of a carpenter who desires to conceal or obscure the ill effects or the bad appearance of a wall at the edges around an opening or adjacent to a post, to do which he would naturally use a covering strip of wood, or other material, and this without the use of anything more than his mechanical skill. It would be like the act of the framer of a picture or lithograph, who, desiring to conceal an imperfect edge, or a defective edge, would

(Testimony of Oscar W. Bond.)

do so by placing around the picture a matting or covering subserving the same office as a border in blotting out or obscuring the defect.

This placing of a border of opaque material around a transparent section made in a sheet of paper, would be the natural act of anyone familiar with the printing art, or with the decorative art, and would be done without the employment of the inventive faculties, and by the natural knowledge of the art in obscuring or blotting out defects around a picture, illustration, or any other design.

Q. 32. If you know how the oily preparation and the surrounding ring or border are applied to envelopes [486] such as shown and described in the first Cohn patent, and such as are in controversy in this case, I will ask you to state to what art recourse is had in the application of such oily preparation and the rings or borders?

The question is objected to, as the patent shows for itself how the preparation and ring may be applied, and the patent also shows that the invention also pertains to the art of envelopes.

A. The application of the transparency-producing material and the border is had by means of subjecting the sheet of paper to the action of a proper form or die, which will give the outline the transparency and imprint the ring or border around such transparency. This operation would probably belong to the printing art.

Q. 33. And in what kind of machines are these dies used, for applying the oily preparation and the

(Testimony of Oscar W. Bond.)

border or ring?

By Mr. TOWNSEND.—Is the witness testifying from what he finds in the Cohn patent, or from what he knows as to the manner in which the Transo envelope is made by Mr. Regenstein's company?

A. Printing-presses.

#### THE SECOND COHN PATENT SUED ON.

Q. 34. Please look at the Cohn patent sued on, No. 824,908, of July 3, 1906, applied for January 17, 1905, for improvements in envelopes, which, for convenience, I will [487] hereafter refer to as the second Cohn patent, since it was the second one applied for the two Cohn patents sued on, and state whether you have studied the patent, so as to understand the thing or article that is described and claimed in said patent.

A. I have examined and studied the patent referred to in the question, and understand the nature of the device or thing shown and described therein.

Q. 35. Please tell us, in your own language, what you understand to be the thing or article described and claimed in this second Cohn patent.

A. The thing or article shown and described in this second Cohn patent is an envelope, having a transparent face or window, so designed and associated with descriptive matter as to offer novel and unique possibilities for advertising.

The envelope is formed by taking a blank sheet of paper, or an envelope blank, and treating a portion thereof with a compound or preparation of a nature to give a transparent effect to the treated portion, and then applying to the remaining portion, or part of

(Testimony of Oscar W. Bond.)

the remaining portion of the blank which forms the face of the printed envelope, some suitable opaque coloring matter which surrounds the transparent section or portion. The transparent section or portion enables the addressee's name to appear through it, and, combined with this feature, is the idea of changing the form or outline of the transparent portion to correspond with the trade mark, design, or advertised object of the party using the envelope. The number and shape of the transparent section or portion is almost limitless, but [488] in each case the outline is to be one which will disclose the form of the article desired to be represented, as, for instance, an oyster, a fish, a cake of soap, a biscuit, an article of hardware, or any other article of manufacture and sale. In other words, the transparency of the transparent portion or section of the envelope is to conform to and present the configuration or outline of any desired article, in and by the transparent window or section itself. This outline, whatever its character may be, is rendered more defined and characteristic by the application of the colored border or ring or opaque portion of the envelope, by which the characteristic of the window is made more definite and pronounced, and any rough edge of the window or outline is blotted out or obscured.

This window or transparent section, of a character representing any desired article, may be employed by itself and unassociated with any descriptive matter or words, or it may be associated with some word or words associated with or relating to the pictorial



(Testimony of Oscar W. Bond.)

feature, so that every one seeing the envelope is confronted with a striking advertisement of a particular brand of goods of a particular dealer.

It is this feature, of making a window in the face of an envelope, and rendered transparent by any suitable means, and of a shape to correspond with the shape of an article, and which is surrounded by an opaque border or ring, and associated with or unassociated with other marks, that forms the subject matter of the invention of this second Cohn patent.

Q. 36. In what particular physical feature does the envelope described and claimed in the second Cohn patent differ from the envelope described and claimed in the first Cohn patent? [489]

A. In having the transparent section or window formed to resemble the outline of some article with which the user of the envelope deals, instead of having the outline of the transparent section or window a plain figure, without any resemblance to an article of trade, or commerce, or manufacture.

Q. 37. This second Cohn patent, like the first one, speaks of a "window," or "window-opening," and of a "border." What do you understand to be the parts respectively of the envelope of this second Cohn patent so designated?

A. The same parts so named in the first Cohn patent. That is, the "window" or "window-opening," is that portion of the face of the envelope which is rendered or made transparent; and by "border" is meant that portion of the envelope which is rendered opaque, whether such opaque portion be a ring, or be

(Testimony of Oscar W. Bond.)

the entire surface of the envelope outside of the transparent section or window.

Q. 38. Please refer to and quote in your answer any statement that you may find in the specification which justifies you in stating, as you did in your last answer, that the portion designated as the "border" may be the entire face of the envelope, with the exception of the transparent window.

A. The specification of this second Cohn patent, column 1, line 33, after specifying how the compound or preparation for giving a transparent effect is applied, states:

"The remaining portion or a part of the remaining portion of the blank which forms the face of the finished envelope A is then imprinted with a suitable opaque coloring-matter."

Again, the second column, page 1 of the specification, beginning with line 61, says: [490]

"This coloring-matter may be applied solid over the face of the envelope, or it may take the form of graduated tints or of being shaded, or the representation of a surrounding border, or cloud effect, as indicated at 3 in Fig. 1."

Again, this same column 2, page 1 of the specification, line 90, says:

"Fig. 2 shows a cigar in transparency and the words 'Blanco cigar' in nontransparency on colored opaque field."

Adjourned until Monday, December 12, 1910, 10 o'clock A. M.

(Testimony of Oscar W. Bond.)

Chicago, Illinois, December 12, 1910.

Parties met pursuant to adjournment. Present as before.

Q. 39. Where the entire surface of the face of the envelope is made to constitute the border, by having the coloring-matter "applied solid over the face of the envelope," as stated in the specification of this second Cohn patent, with the exception of the transparent window, in what way does Cohn add additional matter, if any, to connect the shape of the window with the goods or manufacture of any particular desired party?

A. In no other way, except the outline presented by the transparent window.

Q. 40. For what purpose does Cohn, in the drawings of his second patent, and in his specification, show and describe various words on the face of the envelope?

A. By printing or otherwise placing the word or words on the non-transparent or colored opaque portion [491] or field of the envelope, he indicates the name of the party using the envelope, and any advertising matter that may be desired, thereby creating a most striking advertisement to attract attention in connection with the transparent window illustrative of some article of manufacture of trade or a trade name or mark.

Q. 41. Taking the last paragraph in the first column of the second page of this second Cohn patent, where the patentee says that "generally" the window opening, by itself, alone and unassociated with any

(Testimony of Oscar W. Bond.)

descriptive matter or words, forming an essential feature of the trademark, would have very little significance as referring to a particular manufacturer, and his further statement in the same paragraph that "when" there is associated with the window opening of characteristic or peculiar design a trade name or some word or words "usually" associated with or relating to the pictorial feature, every one seeing the envelope is confronted with a striking advertisement of a particular brand of goods of a particular merchant or firm, what is your understanding as to the necessity or non-necessity of *always*, instead of "generally," using words or printed matter on the face of the envelope, to indicate the particular merchant or firm to whom the trademark represented by the contour of the window refers?

The question is objected to as an incorrect statement, in its latter portion, of the two passages above quoted from said paragraph; that it is irrelevant and immaterial, because the patentee fully explains the construction, and the reason for the construction, followed by the patentee and [492] also by the defendant in this case; and it is an attempt to construe a written instrument, which is in no way ambiguous; and as ambiguity has not been set up in the answer as a defense.

A. My understanding of the statements, in the last paragraph, in the first column of the second page of this second Cohn patent, is that as a general thing the outline presented by the transparent window is



(Testimony of Oscar W. Bond.)

not sufficient for the purpose of indicating the manufacture, and, therefore, in order to set forth clearly the manufacture, Cohn intended to use, in association with the outline presented by the transparent window, the trade name or similar indicating symbol, by which the name of the manufacturer would be presented, so as to indicate, without doubt, by whom the article was made or dealt in, and thereby have the name of the merchant or firm or other party presented on the envelope in addition to the design of the transparent window. This, as I understand it, was to be done in all cases where the name of the party was necessary in order to indicate the user of the envelope, or the party by whom the envelope was used, thereby making a very striking advertisement, which would not be the case if the outline of the transparent window alone were used.

Q. 42. If you find any statement in this second Cohn patent as to what constitutes the essential feature of the invention of such patent, please read the same into your answer.

A. In the second column of page 1 of the specification, [493] after stating different designs which may be presented in outline by the transparent window, the specification states, line 103:

“The essential feature in this connection is a window which in general outline is characteristic of a symbol of trade. By ‘symbol of trade’ is meant any design such as mentioned above or trademark characteristic of certain goods or the product of a certain manufactory.”

(Testimony of Oscar W. Bond.)

By Mr. TOWNSEND.—If the witness desires to make his answer complete, I suggest that he also quote paragraph 3, column 1, page 1, beginning line 14, after the object of the invention.

Q. 43. I notice, in the last paragraph of the specification of this second Cohn patent, on page 1, the statement that when the window-opening is formed by the application of a grease or equivalent compound to the envelope blank, “the colored or stained window is essential to the production of a window of properly defined outline.” What is your understanding as to whether it is the colored or stained “window” or the colored or stained “border” that is referred to in the matter quoted by me?

A. It is the colored or stained window that is the thing which is essential.

Q. 44. I am not asking you as to what is “essential” in the statement quoted in my last question. The specification uses the word “window” twice in such quotation, and my inquiry is, in effect, as to whether the word “window” should have been used twice or only once, and the word “border” used where the word “window” is first used.

Objected to as irrelevant and immaterial.

A. Undoubtedly the word “border” should have been [494] used in place of “window,” where the word “window” first occurs, as the border is colored or made opaque, while the window proper is left transparent.

Q. 45. What is it, in the envelope of this second Cohn patent, that is described as colored or stained—

(Testimony of Oscar W. Bond.)

the window or the border?     A. The border.

Q. 46. Look at the claims of this second Cohn patent and tell us what it is that you understand is to be in outline "characteristic of some symbol of trade"?     A. The transparent window.

Q. 47. What is it, as you understand the claims, that is to surround this characteristic shaped window of the claims of the second Cohn patent?

Such inquiry is objected to as incompetent, if it has for its design and object the disproving of infringement by defendant of Claim 1 in view of the admission made in open court, on behalf of the defendant, that the combination of Claim 1 of this second Cohn patent is infringed by the defendant.

A. A tinted or colored border in Claim 1; and a generally opaque face in Claim 2.

Q. 48. And what is required, as you understand it, to appear or be on the tinted border of the first claim, and on the face of the envelope of the second claim?

The same objection, as far as the question relates to the first claim; and also the question is objected to as the claims are [495] the best evidence of their contents and scope; and the question calls for the mere legal conclusion of the witness, and it is not seen how the opinion of the witness is going to be of assistance to the Court, especially in view of the defendant's admission of infringement of Claim 1, and the obvious and simple character of the invention involved and claimed.

A. On the tinted border of the first claim, per-

(Testimony of Oscar W. Bond.)

manent advertising matter is to appear; such matter forming no part of the address.

On the face of the envelope, permanent printed matter is to appear, under the second claim; such printed matter to co-operate with the outline of the transparent window, to indicate a particular brand of goods.

Q. 49. What is it, according to your understanding of both of the claims of the Cohn patent, that is to be "in outline characteristic of a symbol of trade"—the window or the border?

Same objection.

A. The transparent window.

Q. 50. Please look at the Complainant's Exhibit "C," being one of the envelopes used by the defendant, and which, for convenience, I will hereafter refer to as the Heinz envelope, and compare the same with the envelope described and claimed in both of the claims of this second Cohn patent, and state your opinion, whatever it may be, as to whether or not, you find, in the Heinz envelope, the envelope described [496] and claimed in each of the claims of this second Cohn patent, giving your reasons for any opinion that you may express.

The question is objected to as leading; it is also objected to specifically as an apparent attempt to impeach defendant's voluntary admission, made in open court, that the combination of Claim 1 of this second Cohn patent is infringed by the defendant, and which admission appears on page 32 of complainant's record, and which admission is as follows.



(Testimony of Oscar W. Bond.)

“Mr. SULLIVAN.—We admit that exhibit ‘C’ does contain those features; that is, that it has ‘a window through which the addressee’s name on the enclosure may show, said window being an outline characteristic of some symbol of trade, a tinted or colored border surrounding and giving definition to said window, and permanent advertising matter forming no part of the address, appearing on said tinted border, and related to and in juxtaposition with the outline of said window.’ Is that what you want?

“Mr. TOWNSEND.—You concede that the entire combination of Claim 1 is shown in exhibit ‘C’?

“Mr. SULLIVAN.—We concede that the exhibit does show that.”

By Mr. BANNING.—Defendant’s counsel at this point desires to state that the defendant is not and ought not to be prevented from showing the facts, whatever they may be, as to the identity or nonidentity of the defendant’s envelopes with the envelope described and claimed in the first claim of this second Cohn patent, [497] in view of the fact, as the same will appear from this statement, that the admission referred to by complainant’s counsel, and quoted in his objection above, was made inadvertently by his associate, who was employed merely to act as resident solicitor for the defendant, and who, in making the admission referred to, acted contrary to the explicit instructions which had been given him when he was authorized to attend the taking of com-

(Testimony of Oscar W. Bond.)

plainant's *prima facie* testimony, which defendant's counsel, on whom the responsibility of conducting the defense depended, did not feel required his personal attendance in San Francisco, at an expense of several hundred dollars to his client; that, as he expected the proceedings in the taking of the *prima facie* testimony to be brief and practically formal, he directed the resident solicitor, Mr. Sullivan, to attend, and gave him instructions, as to what he should do, in a letter dated October 11, 1910, which he here reproduces in this statement, as follows:

**[Letter, Dated October 11, 1910, Banning & Banning  
to William A. Sullivan.]**

“October 11, 1910.

Mr. William A. Sullivan,

Attorney at Law,

1110 Humboldt Bank Building,

San Francisco, California. [498]

Dear Mr. Sullivan:

We find on inquiry from our client that the only kind of envelopes that the Heinz Company has used of its manufacture are similar to the ones which we inclose you, in which the transparent window in the envelope is of the same form as it has used in other envelopes, but provided with a green surrounding border resembling in general outline the form of a cucumber and with the word ‘Heinz’ printed on the back of the envelope, so that before a letter is inserted or after a letter has been removed it will appear through the transparent window. We inclose you several of these envelopes, and if Mr. Townsend de-

(Testimony of Oscar W. Bond.)

sires to make his *prima facie* case you may admit that envelopes like them were used by the Heinz Company—not manufactured but simply used—subsequent to the date of the Cohn patents and prior to the filing of the bill. It may be that Mr. Townsend will be in no hurry to take his *prima facie*, but if he should serve notice on you you may accept the same and inform him that you are prepared to admit the kind of envelopes that the defendant has used, provided they correspond with the ones which we inclose. We presume that all Mr. Townsend will do in making his *prima facie* will be to offer the patents in evidence, samples of the envelopes, and examine an expert to testify to the similarities between the envelopes and the patents.

Do not admit infringement, as we think there is no infringement—particularly of the second Cohn patent. Simply admit the fact of use, but make no admission that such use infringes the Cohn patents.

Mr. Townsend should furnish you a carbon copy of his testimony without charge, in consideration of our doing the same with our testimony. This is all provided for in the stipulation that we sent you yesterday and which we trust you will be able to get Mr. Townsend to sign.

Yours very respectfully,

(Signed) BANNING & BANNING."

TAB: F.

Counsel states that he requested Mr. Sullivan to have a copy of the testimony, taken by the complainant on *prima facie*, made by the Master, Mr. Wright,

(Testimony of Oscar W. Bond.)

before whom the testimony was taken, and sent to him, so that he could be apprised of its nature and purport; that he received the copy of the testimony on November 16th last, and immediately read the same; that then, for the first time, [499] did he have any knowledge or intimation that the instructions which he had given, in the letter quoted above, had been inadvertently, as he has no doubt, overlooked by Mr. Sullivan, and the admission quoted by complainant's counsel made in the taking of the deposition of the witness Maynard; thereupon, on the same day, he wrote Mr. Sullivan that he had made a mistake, as counsel did not consider that the defendant's envelopes contained any window characteristic of a symbol of trade, as called for in the claims of the second Cohn patent, and, in order that complainant's counsel might be apprised of the views and position of defendant's counsel, he requested Mr. Sullivan to notify complainant's counsel that he withdrew the admission, and that, if complainant's counsel desired, he might recall the witness Maynard, notwithstanding his time for taking his *prima facie* testimony had expired; that counsel desired such notice to be given, so that complainant would not be prejudiced, and so that complainant's counsel would not be misled as to the actual position of the defendant's counsel, on whom the responsibility of the defense rested; that thereupon Mr. Sullivan served a notice on [500] complainant's counsel, withdrawing the admission, which notice, of which complainant's counsel accepted service, is as follows:



(Testimony of Oscar W. Bond.)

**[Notice of Withdrawal of Certain Admissions Made  
by W. A. Sullivan at Taking of Testimony of  
Complainant November 3, 1910.]**

*“In the Circuit Court of the United States, Ninth  
Judicial Circuit, Northern District of California.*

IN EQUITY—No. 15,204.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY,

Defendant.

To the Complainant Herein, and to Charles E. Townsend, Esq., His Attorney:

You and each of you will please take notice that the defendant herein hereby withdraws the following admissions made by William A. Sullivan, at the taking of the testimony of the complainant herein on November 3, 1910, viz.:

‘Mr. SULLIVAN.—We admit that Exhibit “C” does contain those features; that is, that it has “a window through which the addressee’s name on the enclosure may show through; said window being in outline characteristic of some symbol of trade, and a tinted or colored border, characteristic of some symbol of trade, and a tinted or colored border, surrounding and giving definition to said window, and permanent advertising matter forming no part of the address, appearing on said tinted border, and related to and in juxtaposition with the outline of said win-

(Testimony of Oscar W. Bond.)

dow." Is that what you want?

Mr. TOWNSEND.—You concede that the entire combination of Claim 1 is set forth in Exhibit "C."

Mr. SULLIVAN.—We concede that the exhibit does show that.'

Said admissions being contained and set forth on page 32 of complainant's testimony, taken on said November 3, 1910.

Said withdrawal of said admissions is made upon each and every one of the following grounds:

1. That said William A. Sullivan at the time of making said admissions had no authority, express or implied, from the defendant to make said admissions, or any of them.

2. That said William A. Sullivan in making said [501] admissions and each of them, exceeded his authority from defendant, and acted contrary to the express instructions and directions of defendant.

3. That said admissions were and are, and each of them is, untrue.

4. That said admissions were, and each of them was, made by said William A. Sullivan, through the excusable neglect of said Sullivan.

5. That said admissions were, and each of them was, made by said William A. Sullivan, through the excusable mistake of said Sullivan.

You and each of you will further please take notice that defendant herein hereby offers to permit you to proceed further with the examination of the witness Maynard, concerning each and every matter and

(Testimony of Oscar W. Bond.)

thing set forth in said admissions, and each of them, and does hereby waive any and all objections to the further examination of the said witness as to any of said matters and things, upon the ground that the time for the taking of the testimony on behalf of the complainant herein has expired. Said defendant further offers to pay any and all costs necessary and incident to the further examination of the said witness, Maynard, as to any of said matters and things set forth in said admissions, or any of them.

Dated: November 23, 1910.

(Signed) BANNING & BANNING,  
Solicitors for Defendant.

(Signed) WM. A. SULLIVAN,  
Resident Solicitor for Defendant."

"Due service of a copy of the within hereby admitted November 23, 1910, but comes too late and is not well founded.

(Signed) CHAS. E. TOWNSEND,  
Solicitor for Complainant."

Defendant's counsel, in view of the facts and circumstances, now for the first time exhibited to the Court, submits that no attention whatever should be paid to an admission made without authority, against instructions, and by one who had had no occasion to study the second Cohn patent [502] or to form an opinion as to its real scope and meaning, and on whom the burden and responsibility of the defense was not imposed and did not rest, and so he considers and submits that he is fully entitled to show the facts on the question of infringement of the second Cohn

(Testimony of Oscar W. Bond.)

patent, whatever they may be, for the consideration and determination of the Court when the case is reached for hearing.

Counsel therefore insists upon the question now on the record for answer, and asks that it be again read to the witness and his answer taken.

By Mr. TOWNSEND.—In addition to the insufficiency of the foregoing explanation, by counsel for defendant, counsel for complainant begs to add that, at the time said notice last above quoted was served, counsel for complainant had already received notice of the taking of depositions on behalf of defendant in Chicago, beginning December 1st, 1910; that counsel for complainant had arranged his transportation in view of attending the taking of said depositions by defendant in Chicago, and that as Thanksgiving was on November 24th, it was a practicable impossibility for the complainant to have taken any more testimony, in [503] accordance with the offer and invitation of defendant, and have made the trip to Chicago in time for attending this present session.

By Mr. BANNING.—Defendant's counsel calls attention to the fact that the notice quoted above contains no restriction or limitation as to when the complainant could take the additional testimony referred to, if he desired to take the same, and that, in order that there may be no misapprehension, and in order that the complainant may be in no way prejudiced, he now states that, if the complainant so desire, he may take such additional testimony, on the question of infringement of the first claim, or of both



(Testimony of Oscar W. Bond.)

claims, of the second Cohn patent as he may desire, when he comes to take testimony in reply or rebuttal to the testimony of the defense; and that no objection will be made to such additional testimony, on the ground that it should have been taken on the *prima facie* instead of in reply or on rebuttal.

Recess.

A. Complainant's Exhibit "C" Defendant's Envelope, which will be hereafter referred to by me as the Heinz envelope, is not the envelope described and claimed in the first and second claims of the second Cohn patent. [504]

The first claim of the second Cohn patent is for an advertising device, in the form of an envelope having a window through which the addressee's name on an inclosure may show through, and it is specifically stated that this window shall be in outline characteristic of some symbol of trade, such as noted in the specification of said second Cohn patent, like an oyster, or a fish, or some other product or article of manufacture, or design of a particular nature. The window of the envelope, covered by the first claim of the Cohn patent, is one which presents an outline resembling the outline of a product or an article of manufacture, or a trademark, or some other design.

An examination of the Heinz envelope discloses that it has a transparent window, of an oblong shape, with straight top and bottom edges, and curved ends, which in no manner resembles the outline of a product, or an article of manufacture, or a design of a specific character, or a trademark, but is simply

(Testimony of Oscar W. Bond.)

an ordinary transparent window without an outline characteristic of some symbol of trade.

The Heinz envelope, therefore, lacks entirely the peculiar transparent window called for by the first claim of the second patent in suit, and fails entirely to embody this feature of having a transparent window in outline characteristic of some symbol of trade; and, lacking such window, the Heinz envelope is not within the subject matter of the first claim of the Cohn patent.

Another feature of the first claim of the Cohn patent is a tinted or colored border surrounding and giving definition to the transparent window, by which is meant bringing out distinctly the contour or outline of the transparent window, as to being characteristic of some symbol of trade. [505]

The Heinz envelope has a tinted or colored border, which surrounds the window, but this tinted or colored border is for the purpose of covering up or obscuring ragged or defective edges, produced by treating the paper in making the transparent window, and forming the subject of the first Cohn patent, differing, however, from the border of the first Cohn patent, in having the peripheral edge of the tinted or colored border made to represent the exterior appearance of a cucumber. This border, formed around the transparent window of the Heinz envelope, performs the office and function of the border of the first Cohn patent, and, in addition, presents to the eye the outline of a cucumber, which outline, however, is not carried into the transparent

(Testimony of Oscar W. Bond.)

window of the Heinz envelope, as required by the second Cohn patent.

Another feature entering into the device of the first claim of the Cohn second patent is permanent advertising matter, which is to appear on the tinted border and is related to and in juxtaposition with the outline of the transparent window. Such advertising matter forming no part of the window.

An examination of the Heinz envelope discloses that it has, on the border face of the envelope, the ordinary return card of the user of the envelope, such as has been printed on ordinary envelopes for many years. The Heinz envelope does not have, on its tinted face, any advertising matter, and no matter, outside of the ordinary return card, that is in relation to and in juxtaposition with the window, as all of the [506] face of the envelope, outside of the tinted border around the window, is a plain, ordinary, every day kind of an envelope.

This Heinz envelope, therefore, in my opinion, lacks another important feature of the envelope of the first claim of the second Cohn patent, as it does not have, on its tinted or colored face, any advertising matter of any description whatsoever. It therefore lacks entirely this requirement for an envelope containing the subject matter of the first claim of the Cohn second patent, as regards having a face with advertising matter thereon, and related to, and in juxtaposition with, the window.

It seems to me clear that the Heinz envelope lacks entirely two characteristics or features pertinent to

(Testimony of Oscar W. Bond.)

the envelope of the first claim of the second Cohn patent, which features or characteristics are, a transparent window presenting the outline which is characteristic of some symbol of trade, and advertising matter on the colored or tinted border surrounding this window, which advertising matter is related to and is in juxtaposition with the outline of said window.

I am therefore clearly of the opinion that, lacking as it does the two above-named features or characteristics of the envelope of the first claim of the Cohn second patent, the Heinz envelop does not comply with the requirements of said first claim, and is not the envelope called for by said first claim.

*The second claim* of this Cohn second patent is for an advertising device, in which an envelope, having a generally opaque face, is utilized, said opaque face surrounding a transparent window portion, through which an addressee's name on the inclosure may show or be seen. By opaque face is meant [507] a face having coloring-matter applied solid over its entire surface, so as to inclose the transparent window. The transparent window is one having a general outline characteristic of a symbol of trade, by which is meant that the transparent window has its outline of a shape to present the outline of a product, or trade, or an article of commerce, or any desired design.

As already stated, in considering Claim 1 with this same characteristic window, the Heinz envelope does not have a window in general outline of some symbol



(Testimony of Oscar W. Bond.)

of trade. It has an oblong window with straight top and bottom edges and curved ends, being the ordinary window used in transparent envelopes.

This Heinz envelope lacks entirely a window having the feature or characteristic of being in general outline characteristic of a symbol of trade, and therefore lacks this feature or characteristic, which is called for by the second claim of the second Cohn patent.

The Heinz envelope has the ordinary transparent window, surrounded by a border of opaque material, by means of which any rough or imperfect edges around the transparent window will be covered up or obliterated, as called for by the first Cohn patent; but this surrounding opaque border does not extend entirely over or generally over the face of the envelope outside of the transparent window, and in this respect does not meet the full requirements of the second claim of the second Cohn patent, of having a generally opaque face.

Another feature of the device of the second claim of this Cohn second patent is having permanent printed matter [508] on the face of the envelope, which printed matter is related to and is in juxtaposition with the outline of a window and co-operates with said outline to indicate a particular brand of goods. This particular feature or characteristic of the envelope of the second claim of this Cohn second patent requires that on the envelope shall appear printed matter which, in conjunction with the outline of the window, shall denote or indicate a particular

(Testimony of Oscar W. Bond.)

kind of goods, as, for instance, the name of some cigar, placed in juxtaposition with a transparent window, presenting the outline of a cigar.

The Heinz envelope does not have on its face any permanent printed matter, except the ordinary return card of the user of the envelope, which return card has been used on the corners of envelopes for many years. Outside of this return card, there is no printed matter of any character or type on the face of the envelope, and there is nothing in the shape of printed matter which would indicate, in connection with the outline of the transparent window, any particular kind or brand of goods. The face of the Heinz envelope is a plain face of an ordinary envelope, without any indicating printed matter.

The Heinz envelope lacks, then, this feature or characteristic, which is a requirement of the second claim of the Cohn second patent, of having on its face printed matter, so related and in such juxtaposition to the outline of the window, as to indicate a particular brand of goods.

I am therefore clearly of the opinion that this Heinz envelope is not the envelope called for by the second claim of the Cohn second patent, for the reason that the said [509] Heinz envelope lacks two special features or characteristics of the envelope of the second claim of the Cohn second patent, which features or characteristics are, a transparent window which in general outline is characteristic of a symbol of trade, and permanent printed matter on the face of the envelope, so related and in such juxtaposition

(Testimony of Oscar W. Bond.)

to the transparent window as to indicate in connection with the outline of the window, a particular brand of goods.

I am therefore clearly of the opinion, for the reasons stated, that this Heinz envelope is not the envelope of the second claim of the Cohn second patent.

The border, surrounding the transparent window, in the Heinz envelope, has an edge or outline, around its periphery or outer edge, resembling a cucumber, and on the inside of the back of the envelope is printed the word "Heinz." The purpose of this representation of a cucumber, and the use of the word Heinz showing through the transparent window, as I understand the same, is to carry into the envelope the trade-mark of the Heinz pickle company, as used in connection with the receptacles containing articles put up by said Heinz pickle company.

The small border encircling the plain window of the Heinz envelope is for the purpose of covering up or obscuring ragged or imperfect edges which might be formed in producing the transparent window, being the same purpose as the border used in the Cohn first patent, and not in any way tending to conform to or make more pronounced an outline which is characteristic of some symbol of trade, as called for by the border or opaque face of the claims of the second Cohn [510] patent.

Q. 51. If the green border on the Heinz envelope were carried out or spread over the entire surface, or "applied solid over the face of the envelope," as

(Testimony of Oscar W. Bond.)

the specification of this second Cohn patent says the border may be, would the transparent window, remaining unchanged, be in any way characteristic of a symbol of trade, or of a cucumber, or of any article, to indicate a manufacture or dealer?

The question is objected to as irrelevant and immaterial, as involving a construction of the patent neither warranted by the patent itself or by the evidence, and as involving a theoretical something not employed or contemplated by the defendant.

A. It would not.

Q. 52. How is the window, shown in Figure 1 of the drawings of this second Cohn patent, considered by itself—in the shape of some article or thing sold and dealt in?

A. It presents the outline of a cucumber.

Q. 53. What is employed in the Heinz envelope to present the outline of a cucumber?

A. The surrounding border, the outer edge of which is made to present the outline of a cucumber.

Q. 54. Please compare the size and shape of the window in the Heinz envelope with the size and shape of the window in the Transo Company's stock envelope in evidence, and tell us how you find them to correspond, or not to correspond, with each other, as the case may be.

A. The windows of the two envelopes are the same, as to their size and shape. [511]

Q. 55. Do you know any trademark or article of commerce that the window in the Transo Company's stock envelopes can be said to be in outline character-



(Testimony of Oscar W. Bond.)

istic of, so as to indicate the merchant or dealer handling the same?     A. I do not.

Q. 56. I call your attention to the Watts British Patent No. 7955 of 1895, to which I called your attention the other day, and to the Boldt British Patent No. 29,956 of 1897, to which I have not before called your attention, and ask you to state what you may find disclosed in said patents, as to the use of transparent windows of various forms and shapes, and as to the use of transparent windows that may be utilized "for advertisement purposes, trademark, or the like," or which may be made to represent "letters, trademarks, or devices." In considering each of the patents referred to, you may state the bearing which you may consider that it has on the question of the novelty or patentability of the envelope described and claimed in this second Cohn patent, in view of the fact that one-piece transparent window envelopes were old in the art, as disclosed in the Brown 1862 patent, and in view of the fact that one-piece transparent window envelopes, with borders around the windows, form the subject of the first Cohn patent, and are not claimed in the second Cohn patent, except when the window is made in outline characteristic of some symbol of trade.

Objected to as leading; also as irrelevant and immaterial.

#### THE WATTS 1895 BRITISH PATENT.

This Watts 1895 British patent relates to the packing or making up of tobacco or other goods in packets,

(Testimony of Oscar W. Bond.)

cases, [512] cannisters, or the like.

The object of the invention is to enable the goods inside of the package, case, or wrapper to be readily observed from the outside, so as to avoid the necessity of opening the package, case, or wrapper.

The invention is carried out by cutting a hole or opening of any desired shape in the body of the wrapper, and placing behind this hole or opening a sheet of any suitable transparent material, such as gelatine or celluloid, thereby forming a window through which the contents of the wrapper or package can be observed.

The drawings show various forms of making this window of transparent material. Fig. 1 shows the window in the shape of a triangle; Fig. 2 shows the window of a circle formation; Fig. 5 shows the window of an oval shape with sharp corners or ends; Fig. 6 shows the window with straight line bottom and sides and a curved top; and Fig. 8 shows the window in the form of a diamond.

The triangle or pyramid, and the diamond-shaped windows might be used as trademarks, for some manufacturers.

Considering the second Cohn patent with what is disclosed in the Watts patent in connection with the fact that one-piece transparent window envelopes were old in the art, as found in the Brown 1862 patent, and the further fact that one-piece transparent window envelopes, with borders around the windows, form the subject of the first Cohn patent, and are not claimed in the second Cohn patent, except when the

(Testimony of Oscar W. Bond.)

window is in outline characteristic of some symbol of trade, it seems to me that the second Cohn patent has [513] not added anything to the art of making envelopes or wrappers, having transparent windows of an outline characteristic of some symbol of trade or trademark, for the reason that, in the Watts patent, there is disclosed wrappers employing windows in outline that could be used as a trademark, particularly the pyramid or triangle-shaped window and the diamond-shaped window.

The making of these specially shaped windows integral with the body of the envelope or wrapper would be within the disclosure of the Brown 1862 patent, and the surrounding of these specially shaped transparent windows with a border would be within the Cohn first patent.

The most that can be said as to this second Cohn patent is that Cohn adopted the idea of a special shaped window to be used as a trademark or symbolic of some article in the manner disclosed by the Watts 1895 British patent, using the Brown 1862 patent and the Cohn first patent to complete the envelope. This could be done, in my opinion, without any employment of the inventive faculties.

#### THE BOLDT 1897 BRITISH PATENT.

This Boldt 1897 British Patent relates to the packing of hooks and eyes and other articles.

One subject or purpose of the invention of this Boldt British patent is to provide the packet, wrapper, or envelope in which articles are inclosed, with

(Testimony of Oscar W. Bond.)

one or more openings, which openings are closed or covered with a transparent material, such as celluloid, thus enabling the contents of the packet, wrapper, or envelope to be ascertained readily.

The drawings illustrate various forms of wrappers embodying the invention, and having openings in the body of [514] the wrappers, and the openings closed by a piece of transparent material. The transparent opening in Fig. 1 is in the form of a circle; the transparent opening in Fig. 2 is an oblong one, with straight top and bottom sides and curved ends, resembling the window used in the Stock envelope exhibited in this suit. The opening in the wrapper of Fig. 3 is in the form of a shield. The opening in Figs. 4, 5, 6, 7, and 9, are rectangular or square in shape. It will thus be seen that many forms and designs of openings, forming transparent windows, are shown in this Boldt patent. Fig. 8 of the drawings of this Boldt patent shows an opening cut in the shape of a letter N, and it is stated that "the letter might be chosen to indicate the name of the maker or the full name might be set forth." It is further stated, in the specification of this Boldt patent,

"The same purpose may be effected by painting, embossing or otherwise delineating a trademark or a name or other symbol or device upon the transparent covering as indicated in Fig. 9. Any design or symbol for the purpose of identification or advertisement or other purpose may



(Testimony of Oscar W. Bond.)

be conveniently set forth on the transparent covering C."

It is clear that the inventor Boldt intended and had in mind to utilize the transparent window or opening as a means for delineating a trademark or name or other symbol, or any design or symbol, for the purpose of advertising, being the purpose sought in the second Cohn patent. That this is so is clear from the claims, and from the following statement in the specification, where it says:

"More than one of these openings protected by transparent materials may be used and they may be of any desired shape or size or pattern. For example, they may be made to represent the initials of the firm selling them or may otherwise be utilized for advertisement purposes, trademarks, or the like." [515]

Claim 3 of this Boldt 1895 British patent is as follows:

"3. A window envelope or wrapper having one or more openings such as B covered by transparent material representing one or more letters, trademarks or devices."

Considering the second Cohn patent in connection with what is found in the Boldt 1895 British patent, and the fact that a one-piece transparent window envelope is old in the Brown patent, and the further fact that a one-piece transparent window envelope, with a border of opaque matter surrounding the window, is specifically claimed in the first Cohn patent, and is not claimed in the second Cohn patent, except

(Testimony of Oscar W. Bond.)

in connection with a window of an outline characteristic of some article or mark or design, it seems clear to me that the second Cohn patent is lacking in patentable novelty over the disclosures of the Boldt patent, the Brown patent, and the first Cohn patent.

It would not, in my opinion, require invention to take the window of transparent material of the Boldt 1895 British patent and make such window in the form of a trademark or other design, as stated in the said Boldt patent, and in so doing employ the making of a window integral with the body of the wrapper or envelope, as disclosed in the Brown 1862 patent, and surround such transparent window with an opaque border, as in the Cohn first patent. It would only require the skill of an ordinary mechanic, familiar with the work, to make the changes required to produce, from the Boldt British patent, what is disclosed in the Cohn second patent.

Q. 57. With the envelope of the first Cohn patent in hand, what would the teachings of the Boldt patent disclose to any one skilled in the art of making transparent one-piece [516] window bordered envelopes, as to making the windows of one-piece envelopes in outline characteristic of some symbol of trade?

The question is objected to as incompetent, irrelevant and immaterial.

A. It would disclose all that is necessary, in order to make such an envelope.

Adjourned until Wednesday, December 14, 1910,  
10 o'clock A. M.

(Testimony of Oscar W. Bond.)

Chicago, Illinois, December 14, 1910.

Parties met pursuant to adjournment. Present as before.

Q. 58. Taking the envelope of the first Cohn patent with its transparent window and border, and taking the Boldt patent with its statement that the transparent window in the "packet, wrapper, envelope or whatever it may be termed," made as Boldt says "to represent the initials of the firm selling them or may otherwise be utilized for advertisement purposes, trademarks or the like," or as he expresses it in Claim 3, with the "transparent material representing one or more letters, trademarks or devices," what, in your opinion, would be required to change the form of the window in the Cohn envelope to make "said window in outline characteristic of some symbol of trade," in view of the fact that in the specification of this second patent Cohn says that "by 'Symbol of trade' is meant any design such as mentioned above or trademark characteristic of certain goods, or the product of a certain manufactory"?

Objected to as leading; also as incompetent and immaterial. [517]

A. The work required would be that of an ordinary mechanic or person skilled in the making of envelopes.

Q. 59. In your opinion, would any invention be required? A. None whatever.

Q. 60. When envelopes have been made with windows of one form or shape, would it, in your opinion,

(Testimony of Oscar W. Bond.)

involve any invention to make envelopes with windows of any other 'desired shape, particularly in view of the fact of the disclosure, in prior patents, of envelopes, wrappers, or other closures, with windows of various and diverse shapes?

Objected to as irrelevant and immaterial.

A. No, it would not.

Q. 61. I believe you called attention, in discussing this 1897 English Boldt patent, to one of the ways described in such patent, of representing the trademark or device by painting or otherwise delineating it upon the transparent window or covering, or the opening in the envelope. When this method, described in the Boldt patent, is followed instead of having the transparent material itself present or represent the trademark or other device used, as stated, for example, in the Boldt third claim, how far, in your opinion, if the word "Heinz" showing through the transparent window of the Heinz envelope be regarded as a part of or connected with the transparent window of such Heinz envelope, would the Heinz envelope follow or correspond to that particular method of showing or representing the trademark or device described in the Boldt patent?  
[518]

Objected to as irrelevant and immaterial; as leading; and presuming a reconstruction of the Boldt reference, not warranted either by the evidence or the patent itself.

A. Under the conditions stated in the question, the Heinz envelope, in my opinion, follows or corre-



(Testimony of Oscar W. Bond.)

sponds to the particular method of showing or representing the trademark or device in the form described in the Boldt patent and referred to in the question as being painted or otherwise delineated on the transparent material.

Q. 62. How many methods, if more than one, do you find described in the Boldt patent, for representing or employing a trademark or device in connection with the transparent window of the envelope?

A. Two. One, by having the letter or trademark formed by the outline presented by the transparent material; and the other produced by painting, embossing, or otherwise delineating the trademark or device so as to appear on the transparent material.

Q. 63. Which, in your opinion, do the Heinz envelopes most nearly resemble—the second Cohn patent, or the Boldt patent, in the method of showing a trade name or mark, as pointed out in your last answer as the second method of the Boldt patent?

A. The Boldt patent.

Q. 64. Both of the claims of this second Cohn patent speak of permanent advertising matter, printed or otherwise placed on the face of the envelope, and the drawing shows words forming such permanent advertising matter, [519] so located on the envelope as to not interfere with the portion of the envelope for displaying or showing the name of the addressee to whom a letter or other matter contained in the envelope is being sent. How long, to your personal knowledge, as a matter of fact, have you seen, in general or common use, envelopes con-

(Testimony of Oscar W. Bond.)

taining, on their faces, so located as not to interfere with the part reserved for the addressee's name, permanent advertising matter employed on the envelopes?

Objected to as irrelevant and immaterial; and on the further ground, that if anticipation is attempted to be shown by prior knowledge or use by the witness, that the name of this witness has not been noticed, as required by the statute.

A. Practically ever since I have noticed envelopes of the character specified in the question, which would extend over a period of more than forty years.

Q. 65. I show you, simply as illustrations, two envelopes, one containing, in the upper left-hand corner, the words "Return in 5 days to Wm. Goyette, Plumbing and Heating, 1453 E. 55th Street, Chicago, Ill.," and the other containing on the left-hand portion of its face, the picture of the "Flying Dutchman," and the words "After 5 days return to Molin Plow Co., Moline, Ill. Agricultural Implements, Wagons, Spreaders, Vehicles, Grain Drills," and ask you how long, to your knowledge, you have known of the general use of envelopes with advertising matter of various kinds printed on the face of the envelopes, of which these shown you may be [520] regarded as type samples or illustrative?

Objected to as irrelevant and immaterial.

A. As early as the year 1866, at least.

Defendant's counsel offers in evidence the two envelopes shown the witness, not as in themselves old envelopes but simply as illustrations of kinds of per-

(Testimony of Oscar W. Bond.)

manent advertising matter which business men and manufacturing companies have used generally for many years, and ask that the same be marked "Defendant's Exhibit Goyette Envelope" and "Defendant's Exhibit Moline Envelope."

The receipt in evidence of the two envelopes last referred to is objected to, as the same are irrelevant and immaterial as to any of the issues of the present case.

Q. 66. I show you another envelope, simply as an illustration of the sort of envelope used by lawyers, with the following words printed in the upper left-hand corner, namely: "H. A. Toulmin, Counselor-at-Law, Patent and Trade-Mark Causes. Bushnell Building, Springfield, Ohio. Return if not delivered in 5 days," and ask you how long you have known of the use, among lawyers, of envelopes containing printed matter showing their specialty or particular line of work, and matters of that sort, printed permanently on the face of the envelope.

A. For forty years, at least. [521]

By Mr. BANNING.—Defendant's counsel here offers in evidence the various letters patent or publications called to the attention of the witness, and about which he has been interrogated and testifying, and others, namely:

#### UNITED STATES PATENTS.

No. 36,393, of Sept. 9, 1862, to J. S. Brown.

Re-issue No. 8,514, of Dec. 3, 1878, to R. M. Tudor.

No. 369,059, of Aug. 30, 1887, to J. Jacobson.

(Testimony of Oscar W. Bond.)

No. 752,537, of Feb. 16, 1904, to A. G. Eneas.

No. 766,902, of Aug. 9, 1904, to George Reese.

#### BRITISH LETTERS PATENT.

No. 1119 of 1861, to Johnson.

No. 5823 of 1884, to Peace.

No. 746 of 1894, to Hole.

No. 2339 of 1894, to Pescheux et al.

No. 21,711 of 1894, to Leigh.

No. 7955 of 1895, to Watts.

No. 29,956 of 1897, to Boldt.

No. 25,532 of 1901, to Smith et al.

No. 14,478 of 1904, to Cohn et al.

Defendant's counsel states that he considers that the above patents are fully and unmistakably identified by their dates, numbers, and names, so that it is unnecessary to put any other identifying name or mark on them, but that copies or duplicates of each of said patents will be attached to the defendant's testimony and returned to [522] the Court therewith.

By Mr. TOWNSEND.—The receipt in evidence of each and all of said patents above is objected to, as they are irrelevant and immaterial to any of the questions here involved; the receipt in evidence of the patents to Tudor, Jacobson, and Eneas is Eneas, and Reese, and each of them, is specifically objected to, on the ground that the same have not been noticed to the complainant, as required by section 4920, U. S. Statutes.

By Mr. BANNING.—Defendant's counsel suggests to the Court that the patents above referred



(Testimony of Oscar W. Bond.)

to as not having been noticed or set up in the answer are nevertheless competent, as showing the state of the art, to divest the complainant's patents of novelty or patentability or invention, should the Court consider their subject matter as having such effect, under numerous decisions of the Supreme and Circuit Courts, of which counsel here cites, as illustrative of such decisions, the decision of the United States Circuit Court of Appeals for the Second Circuit, in the case of *Jones v. Cyphers*, 126 Fed. Rep., page 753. [523]

By Mr. TOWNSEND.—Anent counsel's statement, counsel for complainant would further add that the patents to Tudor, Jacobson, Eneas, and Reese are objected to as being inadmissible to show the state of the prior art, to which the Cohn inventions belong.

By Mr. BANNING.—Defendant's counsel also offers in evidence the following:

A certified copy of the file-wrapper and contents in the matter of letters patent of Max M. Cohn, No. 835,850, granted November 13, 1906, for improvements in Envelopes.

A certified copy of the file-wrapper and contents of the appeal to the Examiners-in-Chief, No. 27,349-A, filed February 28, 1906, in the matter of the application of Max M. Cohn, filed November 8, 1904, Serial No. 231,886, for Improvements in Envelopes.

A certified copy of the file-wrapper and contents in the matter of the letters patent to Max M. Cohn,

(Testimony of Oscar W. Bond.)

No. 824,908, granted July 3, 1906, for Improvement in Envelopes.

A certified copy of the file-wrapper and contents of the appeal to the Examiners-in-chief, No. 27,350-B, filed February 28, 1906, in the matter of the application of [524] Max M. Cohn, filed January 17, 1905, Serial No. 241,459, for Improvements in Envelopes.

Counsel states that he considers that the above certified copies are fully identified by the numbers, names, and dates contained on them, without having any further mark or name applied to them by the notary; but that either the same or copies thereof will be attached to the testimony to be returned to the court by the notary.

Defendant's counsel also offers in evidence British Patent No. 11,876 of July 4, 1896, to Busch, as the same is cited by the Examiner and referred to in the appeal of one or both of the above cases, and will therefore serve to illustrate some of the things said by the Examiner and others in the course of the proceedings leading to the grant of the first and second Cohn patents.

Inasmuch, however, as he has as yet been unable to procure a copy of the Busch patent above referred to, owing to the fact, as he is informed, by his correspondents in London, that the same is out of print, but will be reprinted by the British Patent Office and copies forwarded presently, he has been unable, at this time, to produce the [525] same for the inspection of complainant's counsel, but will do so if

(Testimony of Oscar W. Bond.)

possible before the complainant's testimony in reply is taken; and in any event at the earliest date possible upon receipt of such British patent.

Recess.

Cross-examination.

(By Mr. TOWNSEND.)

XQ. 67. I suppose, Mr. Bond, from your testimony, as a professional expert, you have been engaged on behalf of defendant to act in that capacity in the present case; I am right in that, am I not?

A. Yes.

XQ. 68. That, in accordance with such employment, you have particularly considered the various patents which you have referred to in the course of your direct examination with the view of endeavoring to seek out an anticipation of the Cohn patents; is that not also true?

A. No. I have studied the Cohn patents, and the prior art as exhibited by the patents in evidence, to which my attention has been called, for the purpose of pointing out the similarities and differences between what is disclosed in the Cohn patents and what is found of the same nature in the prior patents.

XQ. 69. I may have made my statement a little too broad, in the use of the word "anticipation," but I meant that, in this explanation and comparison which you have made between the Cohn patents and the various other patents, you [526] had in view the showing particularly that with all these other prior patents it did not require invention for Cohn to

(Testimony of Oscar W. Bond.)

evolve his patented construction. Is that not correct?

A. Yes. I had in view the showing, by these prior patents, that Cohn had simply utilized old and well known means in their application to an envelope.

XQ. 70. When did you first know of the Cohn patents and Cohn inventions?

A. That I could not say positively. My first direct attention was called to the Cohn patent some month or six weeks ago, to the best of my recollection.

XQ. 71. Would that also be true, as to point of time, with respect to all the other various patents, U. S. and British, about which you have testified?

A. That I would not like to say positively. I have recollections of having seen the Brown patent several years ago; and may have seen some of the British patents also.

XQ. 72. All these patents, however, have been more particularly called to your attention and submitted to your consideration since the bringing of this suit; is that right?

A. Yes, taking the patents as a whole.

XQ. 72. Have you ever had any practical experience in the manufacture of envelopes, such as described in the Cohn patents? A. No.

XQ. 74. I suppose, then, that your knowledge of the invention, and inventions described in the Cohn patents here in suit, has been derived from your study and consideration of those patents; is that correct?

A. Not wholly, as my present recollection is,



(Testimony of Oscar W. Bond.)

[527] that long prior to the time when my attention was called to the Cohn patents, I had been informed as to making of envelopes of a similar character; though I have never seen the operation of envelopes practically carried out.

XQ. 75. By this prior information, do you refer to the Brown patent?      A. No.

XQ. 76. Do you refer to any of the other patents about which you have testified?      A. No.

XQ. 77. I have followed your outline of the several U. S. and British patents, relied on by the defendant to limit or anticipate the Cohn patents, and have observed with what minuteness and particularity you have dwelt on the *similarities* and *likenesses* between the Cohn patents, and the British patents, and the patents to Brown, Tudor, Jacobson, and Eneas. I would ask you please to assume for a moment that you had been called or retained on behalf of the complainant, and, being imbued with that spirit of impartiality which underlies and is a part of the analytical mind of the expert, please to take these patents to which you have referred, and let us have the *differences* and *dissimilarities* between each of them and the Cohn patents; having in view the aiding of the Court to see both sides of the question; stating what you can in favor of the proposition that these Cohn patents are entitled to the presumption of validity attaching to their issuance. Please include in your answer whatever you can say in favor of the merchantableness of the Cohn inventions as envelopes and as a mailing commodity, as compared with

(Testimony of Oscar W. Bond.)

patent and the envelope of the second Cohn patent, and, like the making of the outline of the transparent section or window characteristic of some symbol of trade or design or trademark, is an addition to what is found disclosed in the first Cohn patent.

The two Cohn patents have in common the making [530] of a section or portion of the face transparent, such transparent section or portion being integral with the body of the envelope on the front or address side. Both of these Cohn patents also have in common making a border of opaque material around the transparent portion or window, to give prominence to the outline of the window, whatever it may be, and to obscure or cover up any ragged edges that may appear around the transparent section or window, with the difference above noted of specific outlines for the transparent sections or windows and the placing of permanent advertising matter or printed matter to go with the outline, as called for in the second Cohn patent.

Considering the first Cohn patent with the patents to which my attention has been called, and about which I have testified, and comparing this first Cohn patent with the disclosures of such prior patents, there are found differences or dissimilarities, as follows:

#### THE BROWN U. S. 1862 PATENT.

As between what is disclosed in this Brown 1862 patent and the Cohn first patent, the difference between the two envelopes is the difference between an envelope with a transparent window or section, with-

(Testimony of Oscar W. Bond.)

out any opaque border formed separate of the paper of the envelope and surrounding the transparent window or section, and one with such a border, for the purpose of giving prominence to the outline of the transparent section or window and obscuring or covering up any ragged edge which might occur in producing the transparent section or window, of the character shown and described in the Brown 1862 patent. [531]

Briefly stated, the difference between the two envelopes—that of the Brown 1862 patent and that of the Cohn first patent—is the difference between an envelope without any border of opaque material, surrounding the transparent section or window, and an envelope having such border.

XQ. 79. To interrupt a moment, Mr. Bond, will you also point out what is the primary object of Brown, as apparent from the title of the patent and from the description, and state in what way a transparent envelope of the character you have attributed to Brown is incidental to the main object of Brown; and state in what other ways Brown contemplated making or using his envelope to carry out his primary object.

A. The invention of the Brown 1862 patent relates to a new and improved “direction” for or a method of directing letters, papers, and packages, and the invention is captioned as “Addressing Letters.”

The invention is divided into two parts or heads, so to speak. One part, and the part first described, consists in the use of separate transferable cards of

(Testimony of Oscar W. Bond.)

address containing the name of the person or party addressed, and place of residence, and such other particulars as may be needful in giving a correct and sure direction, which cards also, for letters and packages, may include the business or professional card of the business or party addressed, and any other information usual or convenient and desirable, which directions may be written, but generally and preferably are printed.

The second or other part or head of the Brown invention is in the use of an improved envelope or wrapper, of which the improvement consists in making the envelope or wrapper sufficiently transparent to clearly show the cards [532] of address through its face. This transparent portion of the Brown envelope may be only large enough to exhibit the directions through it, and such transparent section can be so made by rendering a portion of the envelope or wrapper transparent of itself, either by means or substances such as employed for making tracing paper or any other in the process of manufacturing the paper or the envelope, leaving the remainder of the envelope opaque. This is one way which is described for making the transparent section for the envelope; and another way is described by cutting a piece of the proper size out of the envelope and covering the opening with transparent paper or other equivalent transparent covering. It also appears that for some uses the aperture, when provided in the envelope, need not have the transparent covering, but, when so made, some of the advantages of the complete



(Testimony of Oscar W. Bond.)

invention are thereby lost, as stated in the patent.

Another way of making the envelope is to have the whole envelope, or at least the whole face of it, made transparent instead of making only a small portion thereof transparent. Where the entire face of the envelope is made transparent, an unsealed opaque wrapper may be placed inside if desired, said wrapper having the address card printed on or attached to it, or separate therefrom, as may be most convenient.

According to the description of the envelope of the Brown 1862 patent, it was the intention of Brown to utilize the transparent portion or window in connection with a separate card or piece of paper, to show the destination of the letter or wrapper, by presenting to view through the transparent [533] section or window the name of the addressee, his place of residence, and any other matter that might be necessary. This Brown envelope is of the same character which is stated to be for envelopes of the Cohn first patent, the specification of which states,

“My invention relates to an improved envelope of the type having a generally opaque surface with a more or less limited transparent area for the addressee’s name and address to show through.”

This would be the envelope of the Brown 1862 patent, and the Cohn first patent is differentiated from this type of envelope in having around the transparent section or window a border of opaque material. This border seems to be the only difference between

(Testimony of Oscar W. Bond.)

the two envelopes—that of the Cohn patent and that of the Brown 1862 patent.

The envelope of this Brown 1862 patent differs from the envelope of the Cohn second patent, in not having the transparent section or window in outline characteristic of some symbol of trade, and in not having an opaque border surrounding this specific type of window.

A further difference is that the Cohn second patent makes provision for permanent printed matter or advertising matter on the opaque border around the transparent section or window, and of a character to co-operate with the outline of the window to indicate a particular brand of goods.

The difference between what Brown intended and what Cohn intended in the use of printed matter or advertising matter is the difference between placing such matter on the card used by Brown independent of the envelope proper, and [534] placing such permanent printing matter on the face of the envelope outside of the transparent section or window. In the one case, that of Brown, the printed matter, whatever its nature, was not a permanent part of the envelope, while in Cohn such printed matter, whatever its nature, formed a permanent part of the envelope.

As to the merchantableness of the envelope of the first Cohn patent and the envelope of the Brown 1862 patent, about the only difference would be the difference between a transparent window without a border, as in Brown, and such window with an opaque

(Testimony of Oscar W. Bond.)

border, as in the Cohn first patent; and this merchantableness would be in favor of the envelope of the Cohn first patent, in that the border would serve to hide ragged edges or imperfections made in producing the window. This same difference, as to merchantableness, is also applicable to the envelope of the Cohn second patent, and in addition to the border, probably having the advertising matter or printed matter a permanent part of the envelope would in some cases make the envelope more merchantable than where such printed matter or advertising matter was on a separate card. This would be the case where the party using the envelope wanted to make prominent the business; but, on the other hand, some other party might desire an envelope not having this permanent printed matter or advertising matter; in which case the envelope of the Brown 1862 patent would be the most merchantable. It would depend entirely on the desire or wish of the user, as to which type of envelope—one with permanent printed matter or one without permanent printed matter—that would be the most merchantable. [535]

Adjourned until Thursday, December 15, 1910, 10 o'clock A. M.

Chicago, Illinois, December 15, 1910.

Parties met pursuant to adjournment. Present as before.

(Witness Continuing:)

#### THE TUDOR 1878 PATENT.

The primary object of the Tudor patent is treating a blank sheet of paper so as to produce the appear-

(Testimony of Oscar W. Bond.)

ance of a stained glass window, differing in this respect from treating a blank sheet of paper for the purpose of making an envelope having a transparent window.

One difference between the process employed by Tudor and that employed by Cohn is that Tudor employs a plurality of opaque lines or borders to define a plurality of transparent sections or spaces, while Cohn employs an opaque border to define one transparent section or space in the paper.

Another difference is the lack in Tudor of any permanent printed matter or advertising matter around the border of the transparent section or window, which is specifically required in the second Cohn patent.

Another difference is that while Tudor defines various shapes for the transparencies, such shapes are not characteristic of any symbol of trade, as required in the second Cohn patent. [536]

Another difference is that Tudor uses his prepared paper with its different colored transparent sections as an adjunct to a pane of plain glass, while Cohn uses his prepared paper as an envelope.

Another difference or dissimilarity is that the paper is treated by Tudor for the production of ornamental window glasses and not for the production of an envelope, as intended by Cohn in treating the sheets of paper.

Undoubtedly the invention of Tudor would be merchantable for the purpose intended, but not for use as an envelope, and likewise the invention of Cohn



(Testimony of Oscar W. Bond.)

would be merchantable as an envelope, but not as an ornamental window glass.

There are other minor differences, such as the shape or outline of the transparent sections of windows, of Tudor, as compared with the transparent section or window of the Cohn patent; also in the shape of the complete product; also in the laying on of the opaque lines to define the transparent sections of the two articles, namely, the window glass and the envelope.

These differences are apparent between the article produced by using the Tudor invention and the article produced by using the inventions of the two Cohn patents.

These differences result in the production of articles for different purposes and for different conditions of use.

#### THE JACOBSON 1887 PATENT.

The article or device of this Jacobson patent belongs to the same category as just described for the Tudor [537] patent.

The same differences pointed out in comparing the Tudor invention with the invention of the two Cohn patents likewise pertain to the invention of the Jacobson patent.

#### THE ENEAS 1904 PATENT.

The primary object of the Eneas patent is the formation of a wrapper or other inclosing device in such manner as to permit the contents, or portions thereof inclosed within the wrapper, to be readily and easily

(Testimony of Oscar W. Bond.)

viewed. The wrapper of the Eneas patent is shown particularly in use with a book.

The difference between the wrapper of the Eneas patent and the wrapper or envelope of the Cohn patents is the difference between an ordinary book wrapper and an ordinary envelope, both provided with a transparent section or window.

Another difference is found between a wrapper or envelope having a transparent section or window formed in the paper itself and the wrapper or envelope having a transparent section or window formed by using a supplemental or additional strip or piece of transparent material, as in the Eneas wrapper or envelope.

Another difference which exists between the Eneas wrapper or envelope and the Cohn wrapper or envelope is found in the nonuse of an opaque border around the transparent section or window in the Eneas wrapper or envelope.

Another difference between the wrapper or envelope of the Eneas patent and the wrapper or envelope of the second Cohn patent is the lack on the Eneas wrapper or [538] envelope of any permanent printed or advertising matter.

Another difference between the Eneas wrapper or envelope and that of the second Cohn patent is the lack in Eneas of any transparent portion presenting an outline characteristic of some symbol of trade.

Another difference between the Eneas wrapper or envelope and the wrapper or envelope of the second Cohn patent is the lack, in the Eneas wrapper or en-

(Testimony of Oscar W. Bond.)

velope, of any printed or advertising matter permanent on the envelope or wrapper, and co-operating with the outline of a transparent window to indicate a particular brand of goods, as required for the envelope or wrapper of the second Cohn patent.

Other differences of minor importance also appear between the wrapper or envelope of the Eneas patent and the wrapper or envelope of the two Cohn patents. Such minor differences are, the use of a wrapper or envelope by Eneas to protect a book instead of to inclose a letter, as in an envelope; the necessary difference between a wrapper for a book and a wrapper for a letter; the different shapes required for the two different kinds of inclosures; and the difference between a book wrapper or envelope and a letter wrapper or envelope.

Undoubtedly the Eneas wrapper would be a merchantable article for protecting a book, and unmerchantable as an envelope for inclosing a letter; and, on the other hand, an envelope for inclosing a letter would be merchantable for that purpose but unmerchantable as a wrapper or envelope serving as a cover for protecting a book.

#### THE JOHNSON 1861 BRITISH PATENT.

The primary object or purpose of the invention [539] of this Johnson British patent is to make a board or tablet, for show or window use in displaying of advertisements and for other purposes, which is a different object or purpose than that defined in the two Cohn patents.

(Testimony of Oscar W. Bond.)

The object or purpose of the Johnson 1861 British patent is to treat a sheet of paper so as to present the appearance of stained glass, resembling in this respect the object and purpose of the Tudor and Jacobson patents, which have been considered and compared with the two Cohn patents.

The same differences pointed out in considering the two Cohn patents with the Tudor patent also exists in a comparison of the Johnson British patent with the two Cohn patents.

Other differences of minor importance are found between the article made under the Johnson British patent and the article made under the two Cohn patents. The advertising matter of the device of the Johnson British patent appears to be embodied in the transparent part of the device, and not permanently applied to the border or opaque portion as in the second Cohn patent. The opaque or defining line for the letters or other parts of the design in the device of the Johnson British patent is made around each letter or part of the design, instead of around a window of no particular outline, or a window characteristic of some symbol of trade as required in the two Cohn patents.

The Johnson device employs a plurality of opaque lines for defining a plurality of designs, while in the two Cohn patents the opaque lines surround a single design of a transparent nature. [540]

Undoubtedly the Johnson device would be a merchantable article for the intended purpose of displaying advertising and other matter, but would be un-



(Testimony of Oscar W. Bond.)

merchantable as an inclosure for a letter or mailing commodity; and, on the other hand, the article of the two Cohn patents would be merchantable as an envelope or mailing commodity and unmerchantable as a transparency for use in a window or other place to display advertising or other matter.

#### THE PEACE 1884 BRITISH PATENT.

The primary object or purpose of this Peace 1884 British Patent is to make cases or wrappers by which the inclosed contents can be seen when exhibited for sale.

The difference between the case or wrapper of this Peace British patent and the case or wrapper of the Cohn patents is the difference between a case or wrapper having a transparent window through which the inclosed article can be seen, as in the Peace patent, and an envelope or wrapper having a transparent window through which the address of the letter can be seen.

Another difference is that of making the transparent window of a separate piece of transparent material applied to the front of the case or wrapper so as to show what is contained in the case or wrapper, as in Peace, and in making the transparent window integral with the wrapper so as to show an address of a letter, as in the two Cohn patents.

Another difference between the Peace wrapper and the Cohn wrapper is the difference between a strip or border, formed of the paper of the wrapper and surrounding the edges of the transparent material, and a strip or border [541] of opaque material

(Testimony of Oscar W. Bond.)

applied to the face of the wrapper around the transparent portion, as in the two Cohn patents.

Another difference is the lack in the Peace patent of a transparent window having an outline characteristic of some symbol of trade, as required for the envelope or wrapper of the second Cohn patent.

Another difference is the lack, in the Peace wrapper, of permanent printed or advertising matter placed on the wrapper outside of the transparent window, as required for the wrapper or envelope of the second Cohn patent.

Another difference lacking in the Peace device is an outline and permanent printed or advertising matter so co-related as to indicate a particular brand of goods.

The differences above pointed out are the main differences between the wrapper of the Peace British patent and the wrappers or envelopes of the two Cohn patents.

Other minor differences of no special importance can be found between the wrappers, such, for instance, as the manner of cutting the paper to make the different types of wrappers; the manner of making the transparent windows in different wrappers, as shown by Peace; and the manner of presenting to view the contents so as to determine whether the wrapper contains needles, or fish-hooks, or some other article of trade, instead of having the outline of the transparent window indicate the nature of the article with which the user of the envelope deals, as in the second Cohn patent.

(Testimony of Oscar W. Bond.)

Undoubtedly the wrapper of the Peace British patent would be merchantable for the intended purpose for which the device is designed, just as much as the envelope of the two Cohn patents would be merchantable for the purpose intended. [542] Possibly the wrapper of the Peace British Patent could be used as a mailable commodity, by placing the addressee's name and residence thereon in writing or printing, and perhaps by placing a card with the addressee's name within the wrapper so that the name will appear back of the transparent window. This, however, would not be as convenient as would be the use of an envelope of the character found in the two Cohn patents.

A transparent window formed of material such as talc, gelatine, or other similar material, would be preferable for mailing purpose over a transparent window formed of nonelastic material, such as glass, which is naturally fragile, and would break in the mail unless protected in some manner. An elastic material, such as talc, gelatine, celluloid, and other similar materials, would not be open to the danger of breakage to such an extent as glass, but might not be as practical as a window made transparent in the sheet of paper.

#### THE HOLE 1894 BRITISH PATENT.

The primary object or purpose of this Hole 1894 British patent is the making of coin bags intended for the reception of coin, and such coin bag is constructed of paper or other suitable material with per-

(Testimony of Oscar W. Bond.)

forations through which the kind of coin can be observed.

The difference between the device of this Hole British patent and the device of the two Cohn patents is the difference between a bag having perforations through which the contents can be seen and an envelope or wrapper having a transparent window through which the address of a letter can be seen.

[543]

Another difference is leaving the perforation of the Hole coin bag unprotected or without the use of a transparent covering, while in the envelope of the two Cohn patents the opening or window is formed by the transparent section or portion of the envelope.

Another difference is the manner or method of applying colored matter to the bag of the Hole patent and the manner of applying colored matter to the transparent window of the two Cohn patents, in that the colored matter is applied by Hole to make prominent the openings, while in the two Cohn patents the colored matter is applied to make prominent the window or transparency.

Another difference is the lack, in the device of the Hole patent, of any outline resembling or characteristic of a symbol of trade, as in the second Cohn patent.

Another difference is the lacking, in the device of the Hole patent, of any permanent or advertising matter on the face of the bag outside of the perforations or the colored or opaque strips, or on the colored



(Testimony of Oscar W. Bond.)

or opaque strips as in the envelope of the second Cohn patent.

Another difference is the lacking of an outline and of printed or advertising matter so correlated as to indicate a brand of goods in the bag of the Hole patent and which is characteristic of the envelope of the second Cohn patent.

Other minor differences might be pointed out, such as the use of an open perforation with a black or opaque material surrounding the perforation, as in Hole, instead of a transparent window with an opaque border, as in the two Cohn patents; and also the difference in the intended use of the two devices.  
[544]

Undoubtedly the bag of the Hole patent would be merchantable as a coin bag, just the same as the envelope of the two Cohn patents would be merchantable as envelopes. As a mailable commodity, undoubtedly the envelope of the two Cohn patents would be preferable over the bag of the Hole patent, in that the transparent window of the Cohn envelopes would enable the address of a letter to be observed, which would not be the case with the bag of the Hole patent.

#### THE PESCHEUX AND PAULET 1894 BRITISH PATENT.

The primary object and purpose of this Pescheux and Paulet British Patent is the production of a card by the use of which the effect of dress materials can be displayed.

(Testimony of Oscar W. Bond.)

The difference between the device of this Pescheux and Paulet British patent and the device of the two Cohn patents is the difference between a sheet of transparent material having an outline blocked out thereon by the use of an opaque border, as in the British patent, and the use of a sheet of paper which can be made into an envelope and having blocked out therein or thereon a transparent window by the use of an opaque border.

Another difference is that of having the outline presented by the transparent portion of the sheet in the form of a human being, as in the British patent, instead of having such outline of a plain nature or characteristic of some symbol of trade, as in the two Cohn patents.

Another difference is the difference between using the outline of the human figure, so as to show the effect of a dress pattern placed back of the card, as in the Pescheux [545] and Paulet British patent, instead of showing the name and address of the addressee of a letter placed within the envelope and back of the transparent window.

Another difference is the lacking of any permanent printed or advertising matter on the opaque border of the device of the British patent, as required for the second Cohn patent.

Another difference is the lacking in the British patent of any permanent printed matter in correlation with an outline characteristic of a symbol of trade, and by which a brand of goods is indicated, as required in the second Cohn patent.

(Testimony of Oscar W. Bond.)

Other minor differences also appear between the device of the Pescheux and Paulet British Patent and the two Cohn patents. Such minor differences are the use of the sheet in an outspread condition for the Pescheux and Paulet British patent, and the use of the sheet in a folded condition for the envelope of the two Cohn patents; the use of the sheet in the British patent to place over some dress material and the use of the envelope as a receptacle for a letter; and the manner of using the two devices.

Undoubtedly the device of the Pescheux and Paulet British Patent would be merchantable for the purpose intended, but not for use as an envelope or as a mailable commodity; and likewise the envelope of the two Cohn patents would be merchantable as an envelope and as a mailable commodity, but not as a means for displaying the appearance of some kind of dress goods. [546]

#### THE LEIGH 1894 BRITISH PATENT.

The primary object or purpose of this Leigh British patent is the same as the object and purpose of the Pescheux and Paulet British Patent.

The device of the Leigh British patent is the same as the device of the Pescheux and Paulet British Patent.

The same differences and the same merchantable qualities which have been pointed out in considering the Pescheux and Paulet British Patent with the two Cohn patents also exist as between the device of the Leigh British patent and the two Cohn patents. It

(Testimony of Oscar W. Bond.)

is therefore deemed unnecessary to repeat the differences in considering this Leigh British patent in comparison with the two Cohn patents.

#### THE WATTS 1895 BRITISH PATENT.

The primary object of this Watts British patent is to make a wrapper or other closure for the reception of tobacco and other goods, and so made as to enable the contents of the wrapper or package to be visible from the outside.

The invention of this Watts British patent is on the general line of the Peace 1884 British patent. Both patents cut an opening in the body of the wrapper and close such opening by means of a strip or piece of transparent material, such as gelatine, celluloid, or similar transparent material, and Watts, like Peace, refers to the use of glass as a transparent material, and like Peace prefers a flexible material, such as gelatine or celluloid.

The difference between the wrapper or closure of Watts and that of Peace is that Watts shows openings of [547] different shapes, such as triangular, circular, oval, diamond, and other shapes; and openings of varied shapes are not disclosed as fully in the Peace patent as in the Watts patent.

Inasmuch as practically the wrappers or closures of the Watts and the Peace patents, with transparent windows, are in substance the same, it is evident that the differences which have been pointed out in considering the Peace patent with the two Cohn patents also appear as differences between the wrapper or closure of the Watts patent and the wrapper or clos-



(Testimony of Oscar W. Bond.)

ure of the two Cohn patents.

Therefore, as the same conditions exist between Peace and Watts, as to the construction and use of the wrappers or closures, it is not necessary to repeat the differences which have been pointed out as existing between the Peace closure or wrapper and the device of the two Cohn patents, for the reason that these same differences appear between the wrapper or closure of Watts and the device of the two Cohn patents.

#### THE BOLDT 1897 BRITISH PATENT.

The primary object or purpose of this Boldt British Patent is the making of a packet, wrapper, or envelope, or whatever it may be termed, in such manner as to enable the nature of the contents to be observed, and at the same time have the transparent material employed for inclosing or covering the observation opening represent the initials of the firm, or be otherwise utilized for advertising purposes.

A difference between the wrapper or envelope of the Boldt British patent and the wrapper or envelope of the two Cohn patents is the difference between a wrapper or [548] envelope in which the transparent window is made by the use of an independent piece of transparent material, as in Boldt, and the window made integral with the paper of the envelope, or, so to speak, the difference between a two-piece transparent window envelope, as designed by Boldt, and a one-piece transparent window envelope, as designed by Cohn.

Another difference is the lack, in the wrapper or

(Testimony of Oscar W. Bond.)

envelope of the Boldt patent, of an opaque border surrounding the transparent window, as set forth in the two Cohn patents.

Another difference is the lack of any permanent printed or advertising matter on the wrapper or envelope of the Boldt patent, outside of or anywhere on the face of the wrapper or envelope, which permanent printed or advertising matter is a requisite of the Cohn second patent.

Another difference is the lack, in the wrapper or envelope of the Boldt British patent, of an outline characteristic of a symbol of trade, in correlation with permanent printed or advertising matter, by which a particular brand of goods is indicated.

Other minor differences can also be found, but the above differences are the most prominent and pronounced ones.

Minor differences appear in the form and shape of the wrappers or envelopes; between the location of the transparent sections or windows; and between the general design for which the transparent windows are employed,—Boldt using the transparent window to observe the contents, and Cohn using the transparent window to observe the address of the inclosed letter.

As a merchantable device for the purpose intended, [549] the Boldt wrapper or envelope is as merchantable as the device of the two Cohn patents, for the purpose intended in either patent, but as a mailable commodity possibly the device of the two Cohn patents would have more value than the device of the

(Testimony of Oscar W. Bond.)

Boldt patent, though it would be possible to utilize the wrapper or envelope of the Boldt patent for mailing purposes if so desired, subject, however, to any defect that might pertain to the use of a transparent window of elastic material as compared with the use of a transparent window integral with the body of the envelope.

### THE SMITH & BROWNE 1901 BRITISH PATENT.

The primary object or purpose of this Smith & Browne British patent is the production of a combined opaque and transparent tablet, poster, label, ticket, or sign, to be used for advertising purposes and displaying public notices.

A difference between the device of this Smith & Browne patent and the device of the two Cohn patents is the difference between an advertising transparency of different forms and an envelope with a transparent window for displaying the address of a letter.

The Smith and Browne British Patent is without drawings, but from the printed text it would appear that the device of Smith and Browne lacks the permanent printed matter or advertising matter, the outline of some symbol of trade, and the correlation between the permanent printed or advertising matter and the outline, to indicate a particular brand of goods, as required for the second Cohn patent.

There are other minor differences between the [550] device of the Smith and Browne patent and the device of the two Cohn patents, such, for instance,

(Testimony of Oscar W. Bond.)

as the special manner of producing the transparent effect, or making the transparent section or window; the use for which the two devices are intended; one, the Smith and Browne, as an advertising means; the other, Cohn, as an inclosing means; and the natural differences which would be present owing to the different uses for which the devices are intended.

Undoubtedly, as a merchantable device for the intended use, that of the Smith and Browne patent would be equally as good as the merchantable properties of the Cohn device, for the purpose intended; but neither device would be merchantable for the purpose of the other device; and as a mailable commodity, the device of Smith & Browne would not be available, as it is not the form of an envelope.

So far as concerns differences or dissimilarities, and the other points embodied in the question, the foregoing comparison between the various devices of the patents, considered as belonging to the prior art, and the devices of the two Cohn patents, defines and points out such differences and dissimilarities as are found to exist between the devices.

Recess.

XQ. 80. Which one of all the patents you have considered most nearly approaches the Cohn patents in suit?

A. The Brown 1862 patent has the envelope containing the feature of a single-piece transparent window envelope, corresponding to the envelope of the Cohn patents, without having the opaque border around the transparent [551] window, and which



(Testimony of Oscar W. Bond.)

it would be necessary to have in order to make the envelope of the Brown 1862 patent the fac-simile of the envelope of the first Cohn patent. The envelope of the Brown 1862 patent, in order to make the envelope of the Cohn second patent, would require the addition of permanent printed or advertising matter and making the transparent window in outline resembling a symbol of trade.

There is no one patent which meets the requirements and conditions, in all respects of both of the Cohn patents; but the Brown patent meets the requirements of both Cohn patents as to a single-piece transparent window envelope without the added border around the window.

Owing to the different characteristics between the envelope of the two Cohn patents as meeting the characteristics special to the second Cohn patent and not found in the first Cohn patent, the Boldt 1897 British patent most nearly resembles the characteristic feature of a transparent window having an outline resembling a symbol of trade or a trade name or a trademark, requiring, however, the addition of an opaque border to the design of the Boldt British patent, and also the addition of permanent printed or advertising matter, in order to produce the complete envelope of the second Cohn patent.

XQ. 81. Still keeping in view the previous question, which of the two patents,—Brown U. S. 1862 or Boldt British—each standing separate and alone, most nearly approaches the second Cohn patent, as represented by the claims of said patent; that is, of

(Testimony of Oscar W. Bond.)

the one-piece window envelope with the characterized window envelope and associated advertising matter?  
[552]

A. The Brown would not have the transparent window in outline characteristic of an emblem of trade, combined with permanent printed or advertising matter on the opaque face, and would only meet the requirements of the second Cohn patent as to being a one-piece transparent window envelope.

The Boldt 1897 British patent meets completely the characteristic of a transparent window in outline of some symbol of trade, or a trade name, or a trademark, as required for the second Cohn patent, but is not a one-piece transparent window envelope with an opaque border around the window and with permanent advertising matter or printed matter, co-acting with the outline of the window to indicate a particular brand of goods.

As between the two patents, I would consider that the Boldt British patent has therein more of the characteristics of the second Cohn patent than does the Brown 1862 patent, in that the Boldt British patent has a transparent window with the characteristic of such window set forth in the Cohn second patent.

XQ. 82. So your answer to XQ. 80 would be or is that the Brown U. S. 1862 patent is the best single reference for the first Cohn patent; and that the Boldt 1897 British Patent is the best single reference for the second Cohn patent. Is that right?

A. Yes, though I would say that Brown is pertinent to the feature of a single-piece transparent win-

(Testimony of Oscar W. Bond.)

dow envelope, which feature is common to both the Cohn patents. [553]

XQ. 83. Now, looking at the Defendant's Exhibit Osborne's Art Calendar, and without waiving any of the objections heretofore entered against the same, I would ask you to assume the same impartial attitude and spirit of mind that you have in answering XQ. 77, presupposing that you have been asked this XQ. 77 with regard to the Osborne Art Calendar, simply substituting the latter for the patents mentioned in XQ. 77.

A. The present question requests me to take up the disclosures of the two Cohn patents in connection with the disclosures of the Osborne Art Calendar for 1900, and point out the differences and dissimilarities between what is found in the two Cohn patents and the said Osborne Art Calendar, for the purpose of aiding the Court to see both sides of the question.

Both Cohn patents pertain to envelopes, and in both is found a transparent section or window surrounded by a border of opaque material. It is stated that the object of the colored or opaque border is to give definition to the window opening, and to obliterate or cover up the otherwise rough unfinished outline of the window, such rough unfinished outline resulting from the encroachment of the oil or grease, or other substance by which the transparent window is produced, beyond the limits of the window.

Briefly stated, Cohn, in both of his patents, em-

(Testimony of Oscar W. Bond.)

employs a colored or opaque border for the purpose of giving definition to the transparent window and obliterating or covering up any defects around the edges of the window.

The Osborne Art Calendar of 1900 shows, in instances pointed out in my direct examination and many other instances, [554] the use of a border, colored or opaque, by which a picture or reproduction of some colored work is defined, and this border, as evidenced by pictures or reproductions in the book, serves also to blot out or cover up any defect in the printing of the picture or reproduction by running over of colors around the edges of the picture or reproduction.

The differences and dissimilarities between the use of a border of opaque or colored matter, as in the Cohn patent, and a border of opaque or colored matter around a picture or reproduction, as in the Osborne Art Calendar, is the difference between covering up an unsightly edge produced by oil or grease and a corresponding edge produced by an overrun of colors.

Another difference is that the colored or opaque border, as employed by Cohn in his two patents, brings out the defining outlines of a transparent window, while such border, as employed in the Osborne Art Calendar, defines and brings out the limits of a picture or reproduction.

The differences named are the main differences found in the use of a border as between the Cohn two patents and the Osborne Art Calendar. Other



(Testimony of Oscar W. Bond.)

minor differences of no particular importance can also be pointed out. As, for instance, the manner of applying the colored or opaque border; the different objects or articles to which it is applied; and the different use or purpose for which the articles are intended.

The differences as herein pointed out distinguish the application and use of a border as applied to a transparent window and as applied to a picture or reproduction in color, and disclosed, respectively, in the two Cohn patents [555] and in the Osborne Art Calendar.

Outside of the use of a colored or opaque border for defining purposes, and for concealing or obliterating rough edges, there is nothing in the Osborne Art Calendar pertaining specifically to envelopes having a transparent window, either of a plain configuration or in outline resembling a symbol of trade. The Osborne Art Calendar does have, accompanying the picture or reproduction in colors, a printed name which pertains to the subject of the picture or reproduction, and which is a permanent printed statement on the face of the paper having the picture or reproduction thereon.

XQ. 84. Have you ever had any practical experience as a lithographer, or as a worker in three-color work?

A. No, not as an operator of a press; though I have seen three-color presses at work.

XQ. 85. Turning to the second Cohn patent, Mr. Bond, the object or purpose of the transparency is

(Testimony of Oscar W. Bond.)

that it allows the address to be read on the inclosure. That is true, is it not?

A. Yes, that is one of the objects or purposes of the transparent window.

XQ. 86. That is also the object or purpose of the window of the Heinz envelope, is it not? A. Yes.

XQ. 87. Both envelopes, that of the Cohn second patent and the Heinz, use a compound, in making the transparency, which creeps into the body of the surrounding opaque stock of each envelope. That is true, is it not? [556]

A. The Heinze envelope evidently uses an oily compound for making the transparency, and an envelope made under the Cohn second patent would employ an oily compound, such as paraffine oil, as stated in the specification of the patent.

XQ. 88. In both the Cohn and the Heinz envelopes, the effect of the creeping of the oil is covered by a border of some sort; is that not also true?

A. Yes, that is the purpose, or one of the purposes, for which the border is used.

XQ. 89. This border of Heinz, I believe you have already testified, is made to represent the appearance of a cucumber. That is correct, is it not?

A. Yes, by forming the periphery or outer edge of the border to resemble the shape of a cucumber.

XQ. 90. Look at the drawing, Figure 1 of the second Cohn patent, and state what the shape of the border therein shown represents.

A. The periphery or outer edge is in outline representing a cucumber, corresponding to the outline

(Testimony of Oscar W. Bond.)

of the edge of the transparent window.

XQ. 91. Looking at the cucumber outline shown in Figure 1 of Cohn and the cucumber outline used by Heinz; are they not both symbols of trade?

A. The cucumber outline might be termed a symbol of trade; but an outline presented by a border and not by a transparent window would not be the outline called for under the Cohn second patent. [557]

XQ. 92. I am not calling for a construing of the claims, but simply for the facts of the case—that the cucumber outline in each case, however formed, represents, in itself, a symbol of trade. Is not that perfectly true?

A. Certainly, just the same as the outline of a pear, or the outline of a peach, or the outline of an ear of corn, on a label applied to a can, would indicate the goods supposed to be contained in the can.

XQ. 93. Looking at the “Heinz” envelope, which I hold before you, with the face presented to your view, what is there displayed which indicates a particular brand of goods?

A. The representation of a cucumber, formed by the exterior or outside edge of the border surrounding the window; which would be the same, in effect, if the window were omitted.

XQ. 94. How about the word “Heinz”?

A. Inasmuch as “Heinz” or the Heinz company is known as the manufacturer of pickles, including cucumbers, the border, in and of itself, and with the word “Heinz” imprinted within the border, would

(Testimony of Oscar W. Bond.)

indicate the concern just the same if the transparent window was not present. My recollection is that the trademark of the Heinz company is the representation of a cucumber, with the word "Heinz" printed thereon, and usually this is accompanied by the word "57 Varieties," forming, however, as I understand it, no part of the trademark.

XQ. 95. So that, in this Heinz envelope, the representation of the outline of a cucumber, associated [558] with the word "Heinz," immediately conveys to your mind the goods of business of the defendant company? Is that true?

A. Yes; and it would be precisely the same if I should see a label, presenting in outline a cucumber, and having within the body of the cucumber the word "Heinz."

XQ. 96. That would be also true, would it not, by seeing an envelope like that shown in Figure 1 of the second Cohn patent?

A. Hardly so, especially if accompanied by the name "John Doe, 57 varieties."

XQ. 97. I meant to say that the Cohn window envelope and its representation of a pickle, associated with such advertising matter as you are accustomed to seeing associated with the name and trademark of the defendant, that this Cohn envelope would immediately present or call to your mind the goods or business of the defendant. In other words, assume the word "Heinz" substituting for "John Doe."

A. Yes, from the outline presented by the trans-



(Testimony of Oscar W. Bond.)

parent window when representing a cucumber.

XQ. 98. The position of the word "Heinz" on the envelope, either appearing where the words "John Doe" appear in Figure 1 of Cohn, or inside of the border, as in Heinz, makes no material difference, or any difference in fact, does it, as far as the colocation of the word and cucumber are concerned, in indicating the particular brand of goods?

A. No, but it would make a difference in pointing out the manufacturer. If the name of the manufacturer were imprinted on the outside face of the envelope, it would be present whether the envelope contained an inclosure or [559] not, while if printed on the inner face of the back of the envelope it would not appear, when there was an inclosed letter in the envelope. In the one case, as contemplated by Cohn with his envelope, the name is in correlation to the symbol of trade, and permanent on the face of the envelope where it can always be seen. In the other case, as contemplated in the Heinz envelope, the name of the manufacturer would only appear when the envelope was empty.

Adjourned until Friday, December 16, 1910, 10 o'clock A. M.

Chicago, Illinois, December 16, 1910.

Parties met pursuant to adjournment. Present as before.

XQ. 99. By my last question, I meant the envelope pure and simple as an envelope, without an inclosure. In that case, does it make any difference whether the words appear as they do in the Heinz

(Testimony of Oscar W. Bond.)

envelope as shown in Figure 1 of the Cohn; assuming, of course, that the word "Heinz" is substituted for the words "John Doe"?

A. So far as concerns the word "Heinz" in correlation with a cucumber, there would be no difference whether the word "Heinz" appeared outside of the representation in outline of a cucumber produced by the configuration of the edge of the cut, or whether such name appeared within the space occupied by the representation of the cucumber.

XQ. 100. Which envelope, to your mind, is to be preferred,—the Cohn envelope or the so-called Heinz envelope?

A. Personally, the Heinz envelope would be my preference. Other persons might prefer the Cohn envelope, [560] in which the outline characteristic of a symbol of trade was produced by the transparent window instead of by the border.

XQ. 101. Taking all the patents, U. S. and foreign, which you have heretofore considered, and also the Reese patent, which has been offered in evidence but which I do not understand is relied on for anticipation, but which patent no doubt you are familiar with, and also the Callahan 1902 patent, which counsel now informs me he intends to offer in evidence and which you are no doubt familiar with, and also taking the two Cohn patents here in suit, which of all of them does the Heinz envelope come nearest to?

A. The two Cohen patents, while both belong to

(Testimony of Oscar W. Bond.)

the single-piece transparent-window type of envelopes, possess different characteristics outside of this one common feature. The plain window of a transparent nature of the first Cohn patent does not fulfil the requirements of the transparent window of the second Cohn patent, in presenting an outline characteristic of some symbol of trade; nor does it have the feature of permanent advertising or printed matter so correlated on the opaque border around the transparent window as to indicate, with the outline of the window, a particular brand of goods.

Under these conditions, it seems to me that the Heinz envelope is more like the envelope of the first Cohn patent, in being a single-sheet transparent window envelope, with a border of opaque material surrounding the transparent window, and minus any permanent printed matter or advertising matter on the border outside of the transparent window. [561]

I would, therefore, regard the first Cohn patent as the nearest resemblance, in every detail, to the Heinz envelope.

The envelope of the Brown 1862 patent is also a near approach to the Heinz envelope, as it discloses a single-sheet transparent window envelope without any opaque border around the window, but having the feature of displaying a name through the transparent window, as in the Heinz envelope; differing, however, in having the name on a card separate from the envelope, instead of having the

(Testimony of Oscar W. Bond.)

name printed on the inner face of the back of the envelope, as in Heinz.

While the envelope of the Brown 1862 patent has a transparent window through which a name can be observed, located back of the transparent window, as in the Heinz envelope, it lacks the feature of an opaque border around the opaque window, which is found in the Heinz envelope. Therefore, it seems to me that, taken as a whole, the envelope of Heinz is nearest to the envelope of the first Cohn patent than it is to the envelopes or wrappers of the patents referred to in the question, confining the comparison to single-sheet transparent window envelopes.

XQ. 102. Your answer, then, resolves itself to this: the first Cohn patent. That is true, is it not?

A. Yes.

XQ. 103. Do I understand that your answer would be the same, assuming that the previous question meant as it was intended to mean, Which patent is most like the Heinz envelope, both as a merchantable envelope proper for mailing [562] purposes, and as an advertising novelty of the nature and character embodied in the Heinz envelope?

A. Yes, my answer would be the same, for the reason that the Heinz envelope uses a plain window, such as illustrated in the Cohn first patent, with an opaque border surrounding the window, and does not use a window which, in and of itself, presents an outline characteristic of some symbol of trade,



(Testimony of Oscar W. Bond.)

associated with which on the opaque border is permanent printed or advertising matter.

The Cohn first patent lacks any printed or permanent advertising matter on the border for the envelope shown in Fig. 1, and also lacks any transparent window having an outline characteristic of a symbol of trade; and this is also true of the Heinz envelope.

It is true that the first Cohn patent describes and shows an envelope having a transparent window with an outline characteristic of some symbol of trade with permanent printed or advertising matter on the opaque face of the envelope outside of the transparent window, but this special envelope constituted the subject matter of the second Cohn patent, and is not found in the Heinz envelope.

It is also true that the window of the Heinz envelope is not a rectangular window with straight line sides and ends, but is a window resembling or like the shape of the window in Figure 2 of the Boldt 1897 British patent, and in the Callahan 1902 U. S. patent; but, notwithstanding this difference in the outline of the window, between the Heinz envelope and the envelope of the first Cohn patent, it seems to me that the envelope of the first Cohn patent is the nearest one to the Heinz envelope.

[563]

XQ. 104. The word "Heinz" on the Heinz envelope, which appears inside of the cucumber shape, is on the opaque stock of the envelope, is it not?

A. Yes, it is on the inner face of the opaque back

(Testimony of Oscar W. Bond.)  
of the envelope.

XQ. 105. It is not visible nor in association with the cucumber outline, except when the envelope is viewed from its face side. Is that not true?

A. Inasmuch as the name "Heinz" appears in connection with the transparent outline, when viewed from the back of the envelope, I do not consider that it is visible only from the front of the envelope in connection with the border and not a transparent window having the outline of the cucumber formed by the periphery or outer edge of the border.

XQ. 106. That is, if you hold the Heinz envelope up to the light and view it from the back by transmitted light, it so happens that you can see the letters making up the word "Heinz," but that the word "Heinz" then reads backwards. That is true, is it not?

A. Hardly, the letter "N" would be upside down, but the other letters would appear correct. There would be no difficulty in reading the word as "Heinz."

XQ. 107. Without splitting hairs or controverting the obvious, the same would be practically true of the words "John Doe 57 Varieties" in Fig. 3 of the first Cohn patent, and Fig. 1 of the second Cohn patent, when you view those figures from the reverse side of the sheet by transmitted light. Is that not true? [564]

A. Possibly, the words "John Doe" and "57 Varieties" might be visible with a thin envelope,

(Testimony of Oscar W. Bond.)

but it strikes me that with an envelope of the character of the Heinz envelope these words, if printed on an opaque border around the transparent window, would not be visible from the back of the envelope, while they would be visible viewing the front of the envelope.

XQ. 108. With the Heinz envelope laying flat on the table before you, face up, the word "Heinz" appears on the face of the envelope in association with the cucumber outline, does it not?

A. Yes, such outline being produced by the periphery or outer edge of the opaque border and not by the outline of the transparent window.

XQ. 109. Turning to the first Cohn patent, and looking at the single claim thereof, do I understand that it is conceded that the Heinz envelope embodies the combination of that claim?

A. In my opinion, the Heinz envelope embodies the claim of the first Cohn patent.

#### Redirect Examination.

(By Mr. BANNING.)

RDQ. 110. Your attention has been called to the Callahan 1902 patent, which I intend to offer in evidence. Please state briefly the kind of envelope that is shown and described in the Callahan patent.

A. The envelope of the Callahan patent is one in which the main body or portion of the envelope is of thick or opaque material that will prevent an inspection of the contents, and which is provided on its front or [565] address face with a transparent

(Testimony of Oscar W. Bond.)

window through which the address of the party for whom the letter is intended can be seen. This envelope of the Callahan patent has the transparent window made by cutting out a part of the front face of the envelope, leaving an opening of the required size, and then covering this opening by a strip of transparent material, such, for instance, as very thin rice paper, through which the sending address upon the inclosure can be observed.

This envelope of the Callahan patent can be termed a two-piece transparent window envelope, as contradistinguished from the one-piece transparent window envelope. The window of the Callahan envelope is made prominent by the edge of the body of the envelope around the opening, and such prominence is obtained by the use of colored paper for the body of the envelope.

RDQ. 111. Read the sentence that you have just referred to about the use of colored papers, in your answer to this question.

A. The statement is found, beginning with line 91, column 2, of the first page of the specification, and is as follows:

“Very thin colored paper, as manila paper, might thus be advantageously used for the comparatively opaque portion of my envelope, as the color would prevent inspection of the envelop’s contents. Very cheap manila paper, in fact, is of special utility in the practice of my invention. Other colored papers may be employed, or even black paper may be employed



(Testimony of Oscar W. Bond.)

for the envelopes, black paper, in fact, presenting an advantage over papers of other colors in that a striking contrast may be provided between the address appearing through the envelope and the balance of the envelope.” [566]

RDQ. 112. I show you an envelope that I received a year ago, and ask you how far, if at all, it embodies the envelope described in this Callahan patent.

A. The envelope shown to me embodies in its structure the invention of the Callahan patent.

By Mr. BANNING.—Defendant’s counsel offers in evidence the envelope shown to the witness, as an illustration of the Callahan patented envelope, and asks to have the same marked “Defendant’s Exhibit Callahan Patented Envelope.”

Defendant’s counsel also offers in evidence the Callahan Patent No. 701,839, of June 10, 1902.

RDQ. 113. How long have you seen envelopes like this Callahan patented envelope on the market or in use? A. For seven or eight years.

RDQ. 114. I show you an envelope, and ask you to look at the same and state how far, if at all, it embodies the envelope described in the Brown 1862 patent.

Objected to as no proper foundation laid; the question is leading; and that there is nothing in the evidence to show that this envelope now submitted to the witness is or was made in accordance with any disclosure in the Brown patent.

A. The envelope shown to me embodies the invention of the Brown 1862 patent. [567]

(Testimony of Oscar W. Bond.)

By Mr. BANNING.—Defendant's counsel offers in evidence the envelope last shown the witness, as an illustration of the Brown 1862 patent envelope, and asks to have the same marked "Defendant's Exhibit Brown 1862 Patented Envelope."

By Mr. TOWNSEND.—The receipt in evidence of the last-named exhibit is objected to as irrelevant and immaterial; and also for lack of foundation.

RDQ. 115. In what way, if at all, does the Defendant's Exhibit Brown 1862 Patented Envelope differ from the Defendant's Exhibit Transo Company Stock Envelope?

Same objection.

A. In the lack of a border of opaque material around the transparent window.

RDQ. 116. So far as the question of utility, involved in inclosing and protecting a letter and performing the work and function of an envelope, are concerned, and disregarding the matter of appearance and ornamentation, what difference, if any, is there between an envelope without a border around the transparent window, like this Brown 1862 Patented Envelope, and one with a border around the window, like the Transo Company's Stock Envelope? A. No difference whatever. [568]

By Mr. TOWNSEND.—Does counsel want to stipulate that the so-called Brown envelope just referred to is a specimen envelope made on Transo stock, and rendered transparent by the Transo process by the Transo company, and being similar to the Transo Stock Envelope, except the omission of the border

(Testimony of Oscar W. Bond.)

and the inside tint?

By Mr. BANNING.—Defendant's counsel states that he has not been informed as to the exact facts, but that, as he now understands, the envelope used to illustrate the Brown 1862 patent, being the envelope inquired about, was made by the Transo company on the same kind of paper used for their Stock envelopes, and the same printing plates for applying the oil used in making it that is used for the Stock envelopes; but with the tinted matter omitted from the inner side of the paper and the ring or border omitted around the window on the outside.

Recess. [569]

RDQ. 117. I call your attention to the Busch English patent No. 11,876 of 1896, which was offered in evidence the other day, and ask you to explain what you understand to be shown and described in this Busch patent, which I believe you have examined at the Public Library of this city, and of which I now furnish you a copy of the specification in type-writing.

A. I have examined a copy of this Busch 1896 British Patent in the Public Library of Chicago, and have also examined the typewritten copy of the specification and claims of said patent.

The invention set forth in this Busch 1896 British Patent relates to envelopes for letters and other papers; and the object of the invention is to have, in the envelope, a transparent section or window through which the address of the letter can be read, thus

(Testimony of Oscar W. Bond.)

avoiding the writing or printing of the address on the envelope.

It is provided that in some cases the front of the envelope is made of transparent material and the back opaque, or *vice versa*; and it is also provided that a portion of the front may be transparent, with the rest of the envelope opaque, or the back and portion of the front may be transparent.

The manner of making the transparent portion or window according to the Busch patent is stated as follows:

“The desired contrast or difference may be produced either by choosing two different kinds of paper or printing with opaque coloring matter [570] applied to a portion of the envelope.”

This statement clearly implies that that portion of the envelope which is transparent is set off or presented by printing the balance of the envelope, outside of the transparent portion, with opaque coloring matter, so that an envelope would be produced having a transparent section or window in its face and surrounded by a border of coloring matter extending over all of the face of the envelope outside of the transparent portion.

The drawing, accompanying the Busch specification and forming part of the patent, has three figures, of which Figure 1 shows an outside view of the face of an envelope with an enclosed letter having an address thereon, which address shows through the transparent envelope. Figure 2 is a view similar



(Testimony of Oscar W. Bond.)

to Fig. 1, with half of the front of the envelope torn off, exposing the address underneath. Fig. 3 is a cross-section of the envelope on the line A-B of Fig. 2.

Both Figs. 1 and 2 show a border around the outer edge of the envelope, with the portion within the border transparent, and apparently this border is also around the back of the envelope as well as the front, and in view of Fig. 3, which shows a continuous line, it is evident that the edge border is formed by printing the same with an opaque coloring matter, as indicated in the specification.

The drawings, Figs. 1 and 2, show nearly the entire face of the envelope, as transparent, which would comply with [571] one way of making the envelope with the front and back transparent; and for making an envelope with a portion of the front transparent only, this coloring matter, to give an opaque appearance to the envelope, would be printed on the face of the envelope, extending from the transparent portion or window to the edge of the envelope.

The envelope of this Busch patent would be an envelope having the entire front practically transparent, or an envelope having a portion of the front transparent, and having printed on the front, outside of the transparent portion, an opaque color, leaving only the section or portion which is transparent through which to observe the address on the inclosed letter, the letter being folded, as set forth in the specification of the Busch patent, so as to dis-

(Testimony of Oscar W. Bond.)

close its address through the transparent portion of the envelope.

RDQ. 118. Please compare the envelope of the Cohn patents sued on with the envelope shown and described in this Busch British Patent, and point out the similarities and differences that you observe between the two, and give us your opinion as to what was required, or the character of the act involved, in making the Cohn envelope over the Busch 1896 envelope.

A. The envelope of the two Cohn patents is a one-piece transparent window envelope, and this is also the case with the envelope of the Busch patent.

The envelope of the two Cohn patents has a transparent [572] section or window through which the address of an enclosed letter can be seen, and this is also true of the envelope of the Busch patent.

The envelope of the Cohn patents has an opaque coloring matter applied to the face of the envelope outside of the face occupied by the transparent portion or window, which opaque matter, in one form of applying the same, set forth in the Cohn patents, extends solid over the face of the envelope outside of the transparent portion or window; and this is also true of the envelope of the Busch patent, in applying opaque coloring matter to its face.

The envelope of the Cohn patents and the envelope of the Busch patent have the same features of construction, in that they each are one-piece transparent window envelopes; they each have a transparent portion or window through which to observe the address

(Testimony of Oscar W. Bond.)

of an enclosed letter; and they each have opaque matter applied to the envelope face outside of the transparent window.

The difference between the envelope of the two Cohn patents and the envelope of the Busch patent is the difference between making the transparent window, as in Cohn, by the use of a proper compound applied to paper which is semi-transparent, so to say, and using, as in Busch, a paper which is transparent, thereby avoiding the necessity of using any compound in order to make the transparent section or window.

Another difference, which is applicable only to the [573] second Cohn patent, is the lack, in the envelope of the Busch patent, of a transparent window in outline characteristic of some symbol of trade, and the use, with the outline of such window, of any permanent printed or advertising matter, which would indicate, in connection with the outline, a particular brand of goods.

It would require, in order to produce the Cohn envelope, over what is found described for producing an envelope of a similar character in the Busch patent, the use of a paper which was semi-transparent instead of entirely transparent, and using a transparent-making compound for bringing out the window. This would be the act of anyone skilled in the making of transparent portions or sections in paper by the use of a proper compound, which would be a mechanical act and not require any inventive skill in so doing.

(Testimony of Oscar W. Bond.)

RDQ. 119. You were asked by the complainant's counsel, on cross-examination, to point out the differences which you found between the Cohn envelopes and what was disclosed in the prior patents, to which your attention had been called on direct examination. Please state what the fact may be as to whether or not, in studying these prior patents and in making up your mind in reaching your conclusions, you had considered or disregarded the various differences that you pointed out in compliance with the request of complainant's counsel. [574]

The question is objected to if it is designed to impeach the witness' answer to the cross-examination referred to.

A. The various differences pointed out by me, in my cross-examination, as existing between the subject matter of the Cohn patents and the subject matter of the prior patents considered by me, were observed by me in reaching my conclusions as to the status of the two Cohn patents.

RDQ. 120. Then the conclusions which you expressed on your direct examination were reached and your opinions expressed with these various differences in view and in mind? A. That is correct.

RDQ. 121. How far, in your opinion, do the differences that you pointed out on cross-examination, affect that question as to the novelty, invention and patentability of the Cohn envelopes?

The question is objected to as incompetent, in view of the witness' interest on behalf of the defendant or those behind the defendant; that the question calls



(Testimony of Oscar W. Bond.)

for the self-serving opinion of the witness; and the usurpation of the functions of the court. [575]

A. The differences which were pointed out by me on cross-examination do not, in my opinion, affect the question as to the novelty, invention, and patentability of the Cohn envelopes. The similarities between what is disclosed by the prior patents and the use of the same process for the same purpose is what controls or affects the question of novelty, invention, and patentability in patents.

Recross-examination.

(By Mr. TOWNSEND.)

RXQ. 122. What, in your opinion, is patentable novelty?

A. Briefly stated, doing that which has been done before in a new way or under new conditions, or accomplishing an end or result by new means not before used for accomplishing analogous ends in other arts; or using a new type of machine for a new purpose and accomplishing new results by so doing. Using an old machine without any change and accomplishing a different result would not constitute patentable novelty, as I understand it. The use of a device in connection with a new article, where the device had previously been used with an article of another kind, but accomplishing the same end as a new article, would not constitute patentable novelty. As an illustration, the use of a ground globe around an electric light would be the same as using a ground globe around a gas light, and its use around an electric light would [576] not be considered patent-

(Testimony of Oscar W. Bond.)

able novelty, though it might improve the light. It would be a mere double use, so to speak.

RDQ. 123. What is your definition of invention?

A. Briefly stated, the use of the inventive faculties in carrying forward an idea, either in perfecting a machine, or a process, or some device by which an old result is accomplished in a different manner, or an entirely new result is attained. It would not be invention to transfer a device from one machine to another where the device performed the same office in both machines and where the use of the device did not affect or improve or change the operation of the machine to which it was transferred. That would be mechanical skill, not requiring invention.

RXQ. 124. Does your answer mean that you cannot take an element from one machine or art and combine it with other elements in another machine or art, even though that particular element by itself performs, as far as it is concerned, the same function in both machines or arts, and still have invention in the new combination?

A. The entire machine would be the invention and not the transfer of, say, gearing from a printing press to a threshing machine, the gearing performing the office in both machines. That would be the work of a mechanic who, seeing that the gearing was operative in connection with [577] the cylinder of a printing press, knew that it would be operative with the cylinder of a threshing machine. It would not be the gearing that constituted the invention, but it would be the other mechanisms or devices go-

(Testimony of Oscar W. Bond.)

ing with the gearing to make the complete threshing machine that would be the invention, if there was any invention.

RXQ. 125. In other words, the invention would be in the combination and not in the individual parts. Is that not true?

A. Yes, if the combination was new.

RXQ. 126. Take a garment supporter, for instance, and assume it was old to use a metal pear-shaped loop and a solid head or button co-operating therewith; and that it was also old (but not in garment supporters) to use rubber buttons which will yield easily to sudden pressure and yet not abrade the fabric of a buttonhole, for instance, would there be any invention, in your opinion, in substituting the rubber head or button for the solid head or button in the combination with the old pear-shaped loop?

A. If the rubber button were used in other places and with a companion device which would coact therewith in the same manner as the pear-shaped loop coacted with the rubber button, it strikes me that transferring the rubber button to a peculiar shaped loop, where it performed the same [578] office as it did in the old device, would not constitute invention. But, if the rubber button were used, for instance, as a shirt-stud, and in a different manner from what its use would be with a pear-shaped loop, there might be invention in so combining the two as to produce a new result—that of not abrading the fabric. It seems to me that, in order to determine the question of invention and noninvention of

(Testimony of Oscar W. Bond.)

a rubber button with a metal pear-shaped loop, there should also be presented the fact as to whether this same rubber button was used with a loop not pear-shaped, or a loop which, if the rubber button was not present, would coact with a solid button so as not to abrade the fabric. Practically speaking, the use of a rubber button with a pear-shaped loop, if such rubber button had been used with a nonpear-shaped loop and performed the same office, the transfer of the rubber button to a pear-shaped loop would not change the nature of its use or its effectiveness in use, and therefore, in my opinion, such transfer would not be invention.

I presume the question is based on the sustenance of, I believe it is, the Gordon patent for a hose or garment supporter, and if I recollect rightly the patent was sustained on the showing made that, as the button of rubber had been used, its use was in a different manner than the claimed use in the Gordon patent. It always seemed to me that the decision was based on grounds not tenable if the prior use of the rubber button had been practically the same as its use [579] with a pear-shaped loop.

RXQ. 127. In other words, you are not able to bring yourself to agree with the Court in sustaining the Gorton patent?

A. Hardly that, but it always seemed to me that, if it had been clearly brought out on the defense that there was no utility obtained by the use of a rubber button with a special form of loop over what was obtained by the use of the same button with a differ-



(Testimony of Oscar W. Bond.)

ent form of loop, the Court would have not sustained the Gorton patent.

RXQ. 128. Assume in that case it had been shown that all the rubber button did in the Gorton garment supporter was to resist the tendency of the smooth button to slip, although firmly gripped, and yield sufficiently, while resisting the slipping, to obviate the abrasion of the fabric; also assume that it was a matter of common knowledge, at the time of the Gorton invention, that rubber is neither as hard or unyielding as metal or bone; also assume that it was shown to have been of common knowledge that rubber had the property of clinging, and that it had been used on shoes, stairway steps, and for mats and floor coverings to prevent slipping; also assume that it had been used for buttons in order that its elasticity would permit the button to yield easily to sudden pressure and yet not abrade the [580] fabric of a button-hole, as in the instance of a rubber collar stud; what is your opinion as to invention being involved, and as to your agreeing or disagreeing with the Court in sustaining the Gorton patent, if it was sustained?

A. It certainly could not be contended that Gorton was the discoverer of the yieldability of rubber, nor that he was the discoverer of the fact that rubber would cling under certain conditions, nor the further fact that the elasticity of the rubber buttons would permit it to yield easily under pressure, as that would be the natural property of the rubber. This narrows the question down as to whether the invention,

(Testimony of Oscar W. Bond.)

if any there was, pertained to the rubber button having its natural properties and not to discovery of Gorton, or whether it pertained to the use of this button with its old properties with the peculiar shaped metal loop, by which a new result, not before had in garment supporters, was attained. If, however, the same result had been attained by the use of a metallic loop not of the special pear-shape, the use of the rubber button with the pear-shaped loop, or the combination of the two would lack invention, in that old devices were used and the same result attained as was attained with the use of one of the old devices and another form of loop. On these grounds and under the conditions stated by me, it seems to me that the Court should not have sustained the Gorton patent. [581]

RXQ. 129. I hardly think the witness quite caught the question, and I will ask that it be re-read, and that it is to be assumed that the pear-shaped loop and solid head were old. With that amendment, I would ask if you believe invention was involved, and if you agree or disagree with the court in the Gorton case?

A. That which is inherent in a substance is not patentable. The application of the substance in a peculiar way, by which advantage is taken of its inherent quality or characteristics, might be patentable. Assuming, as stated in the question, that a pear-shaped loop was old, and its use with a solid button would tear the cloth or material, and assuming that Gorton was the first to use a rubber button

(Testimony of Oscar W. Bond.)

for any purpose where it was not desirable to cause an abrasion of the cloth or fabric in connection with the metal loop, its use might constitute patentable novelty. But, if Gorton was not the first to use a rubber button with a metal loop for preventing abrasion, then the use of such rubber button with a special form of metal loop which was old would not be invention, and to this extent I do not agree with the Court in sustaining the Gorton patent.

RXQ. 130. Turn to the Busch British patent, Mr. Bond, please, and also please to read XQ. 77, and make the same summary as to *difference and dissimilarities*, under the same conditions that you did with respect to the various other patents in answer to XQ. 77. [582]

A. A difference between the envelope of the two Cohn patents and an envelope made in accordance with the Busch patent is the difference between semi-transparent paper treated with a compound to produce a transparent section, as in the Cohn patents, and the use of a transparent paper requiring no treatment to produce a transparent portion or window, as in Busch patent.

Another difference, applicable to the second Cohn patent only, is the lack in the Busch patent of any description or illustration pointing out the transparent window which is to have an outline characteristic of some symbol of trade.

Another difference, likewise applicable only to the second Cohn patent, is the lack in Busch of any showing or description setting forth the use of per-

(Testimony of Oscar W. Bond.)

manent printed or advertising matter on the face of the envelope.

Another difference, also applicable only to the second Cohn patent, is the lack in the Busch patent of anything which discloses the use of an outline characteristic of some symbol of trade in connection with permanent printed or advertising matter on the opaque border of the envelope, which, in connection with the outline, indicates a particular brand of goods.

The utility of the Busch envelope as a mailable commodity is different only in the use of the transparent paper over a semi-transparent paper; and the merchantableness of the Busch envelope would be practically the same as that of the envelope of the Cohn patents, so far as furnishing an envelope [583] having a transparent window for observing the address of the letter is concerned.

RXQ. 131. Are those the only differences between Cohn and Busch that appear material to you in the production of an envelope such as here in suit?

A. Yes, at least as to the main differences. There may be minor differences, such as the manner of applying the opaque coloring matter when the envelope is made of one sheet of paper, and the use of two pieces of paper instead of one when the Busch envelope is made in accordance with one form of making the envelopes. However, if an envelope were made of two pieces of paper, and the front was an unpunctured face, I do not believe such fact would be a difference of sufficient importance to take the envelope



(Testimony of Oscar W. Bond.)

made of two pieces out from under the Cohn patent.

RXQ. 132. Can you tell from the Busch drawing whether the envelope purporting to be therein illustrated is made in one piece or two different kinds of paper, as Busch says he may do?

A. Taking Figure 3 as illustrating the manner of making the envelope, I would say that figure illustrates an envelope made of one piece, for the reason that the ends of the paper overlap each other on the back, and do not show any overlapping piece at the top and bottom edges of the envelope. [584]

RXQ. 133. You have previously said that you considered the Brown 1862 patent as the nearest approach to the Cohn first patent, and the Boldt British as the nearest approach to the second Cohn patent. Which patent, Brown, Boldt, Callahan, or Busch, comes nearest to the Cohn patents?

A. There is not much difference as between the first Cohn patent and the Brown 1862 patent, and the Busch 1896 British patent; but as between Brown and Busch, I would select Brown, as he proposes to form the transparent window by the use of proper compound corresponding to the manner in which Cohn proposes to make the transparent window.

If the transparent window is not made in a semi-transparent paper, but would include a window formed of the paper itself, then the Busch would be the nearest to the first Cohn patent.

The Boldt patent is the nearest approach to the Cohn second patent of the various patents named in the question.

(Testimony of Oscar W. Bond.)

RXQ. 134. As to the first Cohn patent, I intended you should take it as it stands, and also take the Brown and Busch patents as they stand, and select one or the other—Busch or Brown—as being in your opinion the nearest thing in the art to Cohn, if you can do so.

A. Inasmuch as the Cohn first patent must stand for its novelty in producing the transparent window on the [585] employment of a compound which will give a transparent effect, the Brown patent is the nearest for this reason.

RXQ. 135. As between Brown, Busch or Boldt, on the one hand, and Callahan on the other, can more or less be said in favor of Cohn over Callahan than you have said in showing the difference between Cohn and the other patents?

A. Limiting the Cohn to a single-piece transparent window envelope, such as described in the Cohn patent, Callahan would not be as pertinent as the other patents named, for the reason that it is a two-piece transparent window envelope. Outside of this difference between Callahan and the envelopes of Cohn, Brown, and Busch, Callahan is in the same category as the patents named.

RXQ. 136. Has the introduction in evidence of the Busch and Callahan patents altered your opinion in any way that the Heinz envelope is most like the first Cohn patent, of all the patents here before the Court?      A. No.

(Sgd.) OSCAR W. BOND.

It is hereby stipulated and agreed between the par-

(Testimony of Julius Regenstein.)

ties and the counsel that the defendant shall have to and including Thursday, the 5th day of January, 1911, in which to [586] conclude the putting in of the defense, and that the complainant shall have to and including the 5th day of February, 1911, wherein to take testimony in rebuttal; and that an adjournment now be taken until Monday, January 2d, 1911, ten o'clock A. M., at Suite 1632 Marquette Building, 204 Dearborn Street, Chicago, Illinois, which is done accordingly.

Adjourned until Monday, January 2, 1911, ten o'clock A. M. [587]

Chicago, Illinois, January 2, 1911.

Parties met pursuant to adjournment. Present as before.

By agreement, adjournment is taken until Wednesday, January 4, 1911, 10 o'clock A. M.

Wednesday, January 4, 1911.

Parties met pursuant to adjournment. Present as before.

[Testimony of Julius Regenstein, for Defendant  
(Recalled).]

JULIUS REGENSTEIN, a witness recalled on behalf of the defendant, in answer to questions by Mr. Banning, deposed and testified as follows:

Q. You are the same Julius Regenstein who has already been called and testified as a witness on behalf of the defendant, are you? A. I am.

Q. The claims of this second Cohn patent speak about permanent advertising matter on the border of

(Testimony of Julius Regenstein.)

the envelope. How long have you known the use of envelopes in this country having permanent advertising matter printed on their faces, so positioned as not to interfere with the space for the address of the envelope? ,[588]

Objected to as irrelevant and immaterial.

A. I have seen such envelopes for the last twenty-five years.

Q. 3. In your other deposition you testified as to your operations in making one-piece window envelopes with borders around the windows, in January, 1904. About when did you begin to apply the oily preparation on sheets of paper with several printing plates, to produce several transparent windows at a single operation of the press, as contemplated and described in this Reese 1904 patent?

A. In January, 1904.

Q. 4. How did you apply the oily preparation to several spots or portions of the single sheet, to make several windows at a single operation?

A. The printing was done on a small Meihle press called a pony.

Q. 5. When did you begin to do that?

A. In January, 1904.

Q. 6. From the time you began, in January, 1904, as you have testified, how continuously and diligently did you proceed with the work until the present time? [589]

A. We experimented and manipulated until we were able to print twenty-four at one and the same impression.



(Testimony of Julius Regenstein.)

Q. 7. From January, 1904, when you began until the present time, has there ever been a period when you discontinued or gave up the work of making one-piece transparent window envelopes?

A. We experimented during the early months of 1904, and did not experiment very much during the latter part of 1904, since we intended and did go actually into business early in 1905, and from that time on we experimented in various ways to this present day.

Q. 8. What did the experimenting that you have mentioned relate to?

A. The experimenting I relate to stands for our experiments in printing twenty-four blanks at one and the same time, and to find the proper oil solutions to make the paper transparent.

Q. 9. Was there any necessity of preparing or equipping special machinery or presses to enable you to print twenty-four windows at a single operation?

A. We were obliged to buy presses for this purpose which in a sense were not special, but a great many changes were made to adjust such presses for our purposes. [590]

Cross-examination.

(By Mr. TOWNSEND.)

XQ. 10. In your answer to Q. 2 just asked you, about how long you had known of envelopes with permanent advertising matter on their faces, you did not have reference to transparent window envelopes in which the advertising matter was related to

(Testimony of Julius Regenstein.)

the shape of the window or a border around the transparent window; but you were referring simply to envelopes of the character of "Defendant's Exhibit Moline Envelope" and "Defendant's Goyerr Envelope?"

A. I was referring to the regular style of envelope, and not to transparent envelopes.

JULIUS REGENSTEIN. [591]

[Testimony of Oscar W. Bond, for Defendant  
(Recalled).]

OSCAR W. BOND, a witness recalled on behalf of the defendant, in answer to questions by Mr. Banning, deposed and testified as follows:

Q. 1. You are the same Oscar W. Bond who has already testified as a witness on behalf of the defendant, are you? A. I am.

Q. 2. I now show you a printed copy of the Busch 1896 patent, No. 11,876, which was not present at the time you were testifying before, nor at the time it was offered in evidence, but which I have since been able to procure. Is that the same Busch patent as the one about which you testified when on the stand before? A. It is.

Q. 3. If you have present any envelopes which correctly represent the envelope shown and described in this English Busch patent, I will ask you to produce the same.

A. I have three envelopes representing three constructions described in the said Busch patent, and here will produce them.

Q. 4. Please describe these three envelopes in de-

(Testimony of Oscar W. Bond.)

tail, and refer to the description in the Busch patent [592] which describes them.

A. The envelope which I now have before me is an envelope in which the front is left almost entirely transparent, with a border of opaque material adjacent to the edges, and around the transparent portion, and with the back of the envelope made opaque by the use of an opaque material.

This envelope corresponds to the form of envelope set forth in the specification and described in these words:

“In some cases the front of the envelope is made of transparent material, while the back is opaque.”

It is also a representation of the envelope shown in Fig. 1 of the drawings, in which the front of the envelope is nearly all transparent, with a border surrounding the transparent portion of the envelope.

The envelope now before me is one in which a small portion only of the front of the envelope is left transparent, and this transparent portion is surrounded by an opaque portion extending to the edges of the envelope on all sides of the transparent portion.

This envelope is of the form also described in the specification of the Busch patent, as follows:

“Or a portion of the front may be transparent, while the rest of the envelope is opaque.”

The third envelope now before me is a type of envelope described in the specification of the said Busch patent, as follows: [593]

(Testimony of Oscar W. Bond.)

“Or the back and a portion of the front may be transparent.”

The three envelopes are envelopes covered by the claims in the patent, in which Claim 1 calls for

“1. A letter envelope made partly or wholly of transparent material, substantially as and for the purpose described.”

Claim 2 calls for

“2. An envelope in which the front or a part of it is transparent.”

This envelope of Claim 2 is in combination with a letter having the address so arranged that it appears through the envelope, substantially as described.

The three envelopes are each in accordance with a form of envelope described in the specification, and are each within the envelope called for by the two claims of the patent.

All three envelopes are made in accordance with the directions found in the specification, in describing how the contrast or difference may be produced, namely,

“By printing with opaque colouring matter applied to a portion of the envelope.”

Q. 5. How far do you consider that the three envelopes produced by you and discussed above are fair, real and actual embodiments and exemplifications of the envelopes shown and described in this English Busch 1896 patent? [594]

A. All three of the envelopes are fair, real and actual representations of envelopes which would be made by following the directions for making envel-



(Testimony of Oscar W. Bond.)

opes, found in this Busch patent.

Q. 6. I notice in the second and third envelopes produced by you that the transparent portion or window of the envelope is somewhat oval in shape. Do you consider that in any way a departure from the description of the Busch patent?

A. I do not. It is merely a matter of selecting the shape of the transparent portion, and there is nothing in the Busch patent limiting the shape of the transparent portion to any particular form.

Q. 7. How far does the oval-shaped window in these two Busch envelopes correspond to the shape of the transparent windows of the Brown 1862 patent?

A. They are substantially the same as the windows of the transparent portions of the envelopes of the Brown 1862 patent.

Defendant's counsel offers in evidence the three envelopes produced by the witness, and asks that they be marked "Defendant's Exhibit Busch 1896 Patent Envelope Nos. 1, 2, and 3," respectively. [595]

The receipt in evidence of the envelopes last offered is objected to as lacking proper foundation, and as not illustrating the Busch patent.

Q. 8. As I understand, these three envelopes produced by you are made out of paper which had been rendered transparent throughout before the paper had been converted into envelopes; is that your understanding?

A. Yes, that is my understanding.

Q. 9. Please state your understanding as to how the entire paper composing these envelopes had been

(Testimony of Oscar W. Bond.)

rendered transparent.

A. My understanding is that in the manufacture of transparent paper the stock, in its original condition, would be of an opaque nature, and, being so, is treated by the use of some substance or material that would render it transparent.

Q. 10. If you have present an envelope of transparent material throughout, as these three envelopes, which you have produced as representative of the Busch envelope, were before the opaque material was printed on them, in accordance with instructions of the Busch patent, please produce the same. [596]

A. I have such envelope, and here produce it.

Q. 11. I believe you, yourself, bought these envelopes, at my request, to have the Busch envelopes made; is that correct? A. Yes, that is correct.

Defendant's counsel offers in evidence the transparent envelope produced by the witness, to show the envelopes which which the Busch envelopes were made, and asks to have the same marked as "Defendant's Exhibit Busch Envelope Transparent Stock."

Q. 12. What do you understand to be the nature of the material or preparation used to make the transparent stock for the Busch envelope?

Objected to as irrelevant, immaterial, and no proper foundation laid; and, furthermore, Busch says what his envelope stock consists of.

A. Some material having the property of transforming paper of an opaque character into paper of a transparent character. So far as my knowledge goes, paraffine is one of the materials ordinarily used

(Testimony of Oscar W. Bond.)

for making paper transparent, but any material having the requisite oily [597] property could be employed for the purpose, such oily substance or material being of a nature to make the paper, when dry, with a solid surface that would not interfere with its use as an envelope, or for any other purpose, and which would not give a greasy appearance or produce a greasy effect with the use of the envelope.

Q. 13. Is paraffine of an oily substance, if you know?

A. I believe it is of an oily nature, in that it will penetrate the paper when applied thereto, and will creep or run more or less, disfiguring the paper in that way unless it is spread entirely over the sheet of paper, and then calendered or otherwise treated so as to set it permanently as a part of the paper.

Q. 14. If these three Busch Patent Envelopes offered in evidence had only had the portion or window shown in them treated with paraffine or other oily preparation, instead of the entire paper composing them, and then the opaque matter printed on them, as it has been, what difference would there have been in such envelopes and the envelope described and claimed in the first Cohn patent?

Objected to for lack of proper foundation; as irrelevant and immaterial. [598]

A. No difference whatever.

Q. 15. Do I understand from you that the only difference between these Busch envelopes, as they have been offered in evidence, and the envelope described and claimed in the first Cohn patent, is as to

(Testimony of Oscar W. Bond.)

the extent or degree to which the oily preparation has been applied, in preparing the stock for such envelopes, respectively?

Object to as leading, and utterly lacking any foundation in the evidence.

A. That would be the only difference between an envelope made according to Busch and an envelope made according to Cohn. The Busch envelope has the entire stock or paper from which it is made rendered transparent over its entire face or surface, and the section or window for seeing the address is made prominent by printing opaque matter around the transparent section over the entire surface of the envelope outside of the window or transparent section. The Cohn envelope is made by rendering transparent only that portion of the envelope which is to serve as a transparent section or window, leaving the balance of the envelope opaque around the transparent section or window, and this opaque portion is so made by employing a border of opaque material, which, in one form, extends from the transparent section or window over the remaining portion of the face of the envelope, the same as in the Busch envelope. [599]

Q. 16. If we took the envelope of the Brown 1862 patent, and printed an opaque coloring matter over the face of the envelope outside of the window, exactly in accordance with the instructions and directions of the Busch 1896 patent, what patented envelope would result?

A. The envelope of the first Cohn patent would re-



(Testimony of Oscar W. Bond.)

sult from taking the envelope of the Brown patent and printing thereon opaque matter, as instructed by the Busch patent.

Q. 17. When you were asked, on cross-examination in your former deposition, to select that single patent, of the various ones offered in evidence, which you considered to most nearly, in and of itself, approach or disclose the envelope of the first Cohn patent, I believe you selected the Brown 1862 patent. Why did you select that patent instead of the Busch British 1896 patent?

A. For the reason that the Brown envelope is made from an opaque stock, as called for by the claim of the first Cohn patent. This opaque stock in Brown has a portion thereof rendered transparent, which is also a requirement of making an envelope under the claim of the first Cohn patent; and, therefore, it seemed proper for me to select the Brown patent as having the nearest resemblance or being the nearest approach to the envelope of the first Cohn patent, rather than the Busch, in which the stock for the envelope is made entirely transparent instead of being opaque with only a portion [600] transparent.

Q. 18. Please state your opinion, whatever it may be, as to whether or not any invention was or could be involved in taking the envelope of the Brown 1862 patent, and converting it into the envelope described and claimed in the first Cohn patent, in view of the teachings and instructions of the Busch 1896 patent, giving your reasons for any opinions you may express.

Objected to as incompetent, and immaterial.

(Testimony of Oscar W. Bond.)

A. No invention, in my opinion, was required to apply the instructions of the Busch patent as to making the face of the envelope outside of a transparent section opaque, and using such instructions in connection with the envelope of the Brown 1862 patent.

It seems to me that the condition would be like this: A manufacturer of envelopes, knowing of the Brown patent and the benefits derived from using the transparent portion of the Brown envelope to disclose the address of a letter, and seeking to improve the appearance of the transparent portion or window, in looking over what has been done in the making of envelopes came across the Busch patent, and found from the instructions of such Brown patent that it was possible to make the transparent window or section of the Brown envelope more prominent by following the instructions of Busch, and printing around the transparent window or section of the Brown envelope a facing of opaque matter. [601] The manufacturer, in so applying a border or facing of opaque matter around the transparent section or window of the Brown 1862 envelope, by printing the same on the face of the envelope would simply follow out the instructions given by Busch for making an opaque surface or border around the transparent window, and would simply follow such instructions. Instructions given to a party how to do a thing or instructions followed by a party in doing something are not and cannot be the invention of the party who follows the instructions. As a matter of fact, the following of instructions could never be regarded as inventions.

(Testimony of Oscar W. Bond.)

Cross-examination.

(By Mr. TOWNSEND.)

XQ. 19. In your answer to Q. 12 and following, regarding the nature of materials used to make the transparent stock for the Busch envelope, were you not referring to what you believed was the method sometimes employed in making ordinary transparent paper, and not to any particular method for making the transparent paper employed by Busch?

A. Busch simply states that the paper from which his envelopes are made is transparent; and in giving my answer to Q. 12 and following I referred to the ordinary practice of making transparent paper, and not to any particular method employed by Busch, who is silent as to how the transparent paper used for the Busch envelopes was or [602] is to be made.

OSCAR W. BOND.

It is stipulated by the counsel for the parties respectively that if Thomas A. Banning were called as a witness he would testify that he personally dictated and signed the letter to Mr. Regenstein dated December 16, 1903, copied in Q. 45 of Mr. Regenstein's deposition; and the letter to Mr. Sullivan dated October 11, 1910, copied in the statements following Q. 50 of Mr. Bond's deposition; and that such letters were dictated and signed on the day of their dates respectively and duly mailed to Mr. Regenstein and Mr. Sullivan.

It is further stipulated that uncertified copies of the certified copies of the file-wrappers and contents

offered in evidence at the end of Mr. Bond's direct examination, closing with Q. 66, may be attached to the end of the depositions of the defendant's witnesses, and returned to the Court with such depositions as a matter of convenience, although the [603] certified copies are also to be produced and filed at the time of the hearing.

It is further stipulated that the time for the complainant to take his reply or rebutting testimony shall be extended until the first day of March, 1911, and that no testimony shall be taken before February 10, 1911.

It is further stipulated that the notary shall return the testimony by sending the same by express to H. M. Wright, Esq., Examiner in Chancery, Post-office Building, San Francisco, California, with no unreasonable delay.

By Mr. BANNING.—Defendant's counsel now states that the defense here rests. [604]

State of Illinois,  
County of Cook,—ss.

I hereby certify that the foregoing depositions were taken in pursuance of the notice hereto attached, at the place stated in the caption thereof, and upon the day set forth in said caption and the succeeding days recited from time to time to which adjournments were taken, in my presence and in the presence of counsel for the respective parties to the cause in said caption entitled; that previous to giving their testimony the said witnesses were by me duly sworn to tell the truth, the whole truth, and nothing but the truth in said cause; that said depositions were



taken down by me on a typewriting machine as the questions were asked and the answers given, and read over to the witnesses as the taking of the depositions proceeded; and that I am not attorney or counsel for any of the parties to said cause, nor in any way interested in the event thereof.

In witness whereof I have hereunto set my hand and notarial seal this 5th day of January, 1911.

[Seal]

FRANCES M. FROST,  
Notary Public.

Chicago, January 10, 1911.

Received of Banning, on behalf of the defendant, \$153.80 notary's fees for taking the foregoing depositions.

FRANCES M. FROST,  
Notary Public. [605]

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**[Complainant's Exhibit "H."]**

Serial No. 231,886. Paper No. 1½.  
Application.

Filed Nov. 8—1904.

\$15.—RECEIVED

Nov. 8, 1904. Y.

CHIEF CLERK U. S. PATENT OFFICE.  
PETITION.

To the Commissioner of Patents:

Your petitioner Max M. Cohn citizen of the United States and resident of the city and in the County of San Francisco and State of California whose post-office address is 416 Sansome St San Francisco California prays that letters patent may be granted to him for the improvement in Envelope set forth in

the annexed specification; and he hereby appoints GEO. H. STRONG, of San Francisco, Cal., whose register number is 1537, and T. W. FOWLER, of Washington, D. C., whose register number is 144, his Attorney, with full power of substitution and revocation to prosecute this application, to make alterations and amendments therein, to receive the Patent, and to transact all business in the Patent Office connected therewith.

Signed at San Francisco in the County of San Francisco and State of California this 27th day of October, 1904.

MAX M. COHN.

Note: Please direct all correspondence to T. W. Fowler, Washington, D. C.

#### SPECIFICATION.

To All Whom it May Concern:

Be it known, that I Max M. Cohn a citizen of United States residing at the City and ~~in the~~ County of San Francisco and State of California have invented new and useful improvements in Envelops of which the following is a specification. [606]

My invention relates to an improved envelop of the type having a generally opaque surface with a more or less limited transparent area for the addressee's name and address to show through.

The object of my invention is to provide an unpunctured envelop of this character which shall be simple and cheap to manufacture, practical in every way and which shall offer novel and unique possibilities for advertising.

The invention consists of the parts and the con-

struction and combination of parts as hereinafter more fully described and claimed, having reference to the accompanying drawings, in which—

Sub A  
Jan. 6-'05

Figs. 1 and 2 show envelopes having transparencies of various shapes.

Figs. 3 and 4 are modifications showing transparencies in the form of a design or trade mark.

In carrying out my invention I take a blank sheet of paper or an envelop blank of suitable strength and texture which is, say, semi-transparent, and apply to a portion of one side of the blank, generally on the inside, a preparation which has the property of rendering transparent the portion to which it is applied. The remaining portion, or a part of the remaining portion of the blank which forms the face

of the finished envelop is then imprinted with a suitable opaque coloring matter

such as paraffine oil  
I employ a or and resin or a grease  
I have compounded a preparation which  
produces the desired result of rendering a semi-transparent paper transparent. This preparation is stamped or printed on or otherwise applied to the or window blank to provide the transparency of the desired design and it is applied to such part of the blank where the transparency [607] is desired to appear on the face of the envelop and it may cover a larger or lesser space according to the desired size of the transparency or window.

Since the oily preparation has a tendency

to creep or "bleed" beyond the borders of the space imprinted by the stamp or die by which it is applied and so possibly stain or discolor the rest of or give a ragged appearance

to the window opening,  
the envelop, it is preferred even where the paper

<sup>Λ</sup>  
might ordinarily be deemed sufficiently opaque, to apply some sort of coloring matter at least around the immediate borders of the transparency. This coloring matter may be applied solid over the face of around the window as in Fig. 2

the envelop or it may take the form of graduated tints or of being shaded, or the representation of a surrounding cloud effect, as indicated <sup>at 3</sup> in Fig. 1.

Insert B

<sup>Λ</sup> B

Usually and perhaps preferably the preparation and coloring matter are applied on opposite sides of the blank; the preparation on the inside and the coloring on the outside.

Developing out of this idea of making an unpunctured envelop with a window or transparency for the addressee's name to appear through, is the idea of changing the form or outline of this transparency to correspond with the trade mark, design, or advertised object of a merchant, manufacturer, advertiser, or other person, company or firm.

Jan. 6-'05. In Figs. 1-2 are shown envelopes ~~a having~~  
~~transparencies 2 of various shapes, and vari-~~  
~~ously colored and bordered.~~

In Figs. 3-4 are shown possible modifications of this idea adapted to advertising purposes in which



the transparency is made to assume the shape of some advertised article, trade mark or the like together with certain letters or words as 4 standing out uncolored and non-transparent in the generally opaque surrounding border. [608]

Fig. 3 shows a transparency in the shape of a cucumber, the trademark of a well known manufacturer of a great many varieties of goods. Fig. 4 shows a cigar in transparency and the words "Blanco-Cigar" in non-transparency on colored opaque field.

The number of shapes this transparency may take almost limitless

Jan. 5-'05. is ~~immense~~: different people might use an envelope with a window in the shape of an oyster, a fish, a cake of soap and other toilet articles, a cascade, a dress-shield, a biscuit, an article of hardware and other articles of manufacture, and so on indefinitely, having due regard for the necessary size of the transparency so as not in any way to interfere with the clear showing up of the addressee's name inside. The essential feature in this connection is a window which in general outline is characteristic of a symbol of trade. By symbol of trade is meant any design such as mentioned above or trade mark characteristic of certain goods or the product of a certain manufactory.

Insert C

C

Jan. 6-1905. I thus produce a most unique and at the same time inexpensive and effective advertising medium. Every one needs envelopes. These advertising envelopes can be made at small expense. They can be made of any shape or size and made to fit

the stationary rather than the stationary made to fit the envelop. They can be used not only for mailing but for sending out circulars and the like by messenger. The characteristically shaped window and associated the uncolored letters and colored background advertisement constitute a most striking advertisement to attract public attention, the object of all advertising. [609]

Having thus described my invention, what I claim and desire to secure by Letters Patent is—

Sub D.  
Jan. 5-  
1905

1st. As a new article of manufacture an envelop made of semi-transparent stock and rendered by suitable means locally transparent to produce a window through which an addressee's name within the envelope is viewable.

2nd.- An unpunctured envelop of non-transparent stock, to a portion of which a preparation has been applied to render such portion transparent and a colored or tinted border surrounding said transparent portion.

3rd.- An envelop having an unpunctured face of relatively opaque stock, the face of said envelop having a limited area treated to render said area transparent, the side of the face opposite to that which has been so treated being colored or colored to form a border around said transparent portion.

4th. An unpunctured envelop of non-transparent stock to a portion of which a preparation has been applied to render such portion transparent and a colored or tinted border said surrounding said transparent portion, said transparent portion being in general outline characteristic of a symbol of trade.

[610]

5th.- An advertising device comprising an envelop having a window through which the addressee's name on an enclosure may show through, said window being in outline characteristic of some symbol of trade.

6th.- An advertising device comprising an envelop having a window through which the addressee's name on an enclosure may show through, said window being in outline characteristic of some symbol of trade, a tinted or colored border surrounding said window and advertising matter forming no part of the address, appearing on said tinted border.

7th.- As an advertising device, an unpunctured envelop having a generally opaque face except for a transparent window portion through which an addressee's name on an enclosure may show through, said window being in general outline characteristic of a symbol of trade.

8th.- As an advertising device, an envelop having a transparent window portion in its face and a surrounding colored or tinted background, said window portion being in general outline characteristic of a symbol of trade.

9th.- As an advertising device, an envelop having a transparent window portion in its face, and a surrounding colored or tinted background, said window portion being in general outline characteristic of a symbol of trade and printed matter unassociated with the address upon said colored background.

[611]

In Testimony Whereof I have hereunto set my hand in presence of two subscribing witnesses.

MAX M. COHN.

J. M. ELLIS.

S. THOM.

## OATH.

State of California,

City and County of San Francisco,—ss.

Max M. Cohn the above-named petitioner, being sworn (or affirmed), deposes and says that he is a citizen of United States, and resident of the city and ~~in the~~ county of San Francisco and State of California that he verily believes himself to be the original, first, and sole inventor of the improvements in Envelops described and claimed in the annexed specification; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, or patented or described in any printed publication in any country before his invention or discovery thereof, or more than two years prior to this application, or patented in any country foreign to the United States on an application filed more than twelve months before this application, or in public use or on sale in the United States for more than two years prior to this application; and that no application for patent on said improvements has been filed by him or his representatives or assigns in any country foreign to the United States.

MAX M. COHN.

Sworn to and subscribed before me this 27th day of October, 1904.

[Notarial Seal]

JAMES M. ELLIS,

Notary Public in and for the City and County of  
San Francisco, State of California. [612]



2-260

FEF.

Paper No. 1.

All communications respecting should give the serial number, date of filing and title of invention.

Division 32.

Room 148.

Address only: The Commissioner of Patents, Washington, D. C.

Department of Interior,

United States Patent Office,

Washington, D. C., December 22, 1904.

MAILED

“ “ “ “

Serial No. 231,886, Paper No. 1.

M. M. Cohn,

Rejection.

C/o T. W. Fowler,

DIV. 32.

Washington, D. C.

Please find below a communication from the EXAMINER in charge of your application.

No. 231,868, filed Nov. 8, 1904, “Envelopes.”

F. I. ALLEN,

Commissioner of Patents.

Claims 1, 2, and 3 are rejected as being substantially anticipated in British patent to Busch, 11,876, July 4, 1896 (229-71) in view of the immemorially old practice of country boys in making paper lanterns of greasing the whole or a part of the paper to render the lantern more translucent. The coloring of the “border” may be regarded as of no patentable significance in the claims in view of either of the British patents to Whitty, 2899, Oct. 6, 1869 (Same

class), and Golby, 1985, Jan. 31, 1900 (Same Class).

Claims 4 to 9, both inclusive, are rejected upon patent to Hatfield, 202,816, Apr. 23, 1878 (Same class) when taken with Busch, *supra*. The Hatfield reference shows that it is old to vary the form of the display opening almost without limit, and even aside from this the mere shape of the opening is not seen to be of any mechanical significance. Such shape appears to go to design or ornament only.

Applicant is required to insert in the specification herein the composition of his "preparation."

R. C. F.

JAY F. BANCROFT, Examiner.

[613]

SPECIMEN ENVELOPE CANNOT BE FURNISHED.

[614]

Serial No. 231,886. Paper No. 2.

Amendment. A-B-C-D.

Filed Jan. 6-1905.

U. S. PATENT OFFICE.

JAN 6, 1904.

DIVISION XXXII.

In the matter of the application of

Max M. Cohn,

Envelopes.

Filed November 8, 1904.

No. 231,886.

Commissioner of Patents,

Sir:- The above entitled application is hereby amended  
as follows:

Page 1, lines 13-16, cancel the description of the figures and  
substitute Fig. 1 shows an envelope embodying my invention in  
which I employ a tinted or colored border around the window open-  
ing to cover up signs of "creeping" or "bleeding" of the pre-  
paration into the surrounding body of the paper. Fig. 2 repre-  
sents an envelope with a different shaped opening from that of  
Fig. 1 and in which the entire face of the envelope around the  
window is assumed to have been imprinted or colored to give de-  
 finition to the window opening and obliterate signs of "creep"  
in the transparency-producing preparation. Figs. 3 and 4 show  
modifications of the invention applied to advertising purposes"

- ✓ Page 1, line 24, after "envelope" insert "A"
- ✓ Page 1, line 26, erase "Have compounded a" and insert "employ a  
compound or" and same line, after "preparation" and insert "such  
as paraffine oil and resin or a grease"
- ✓ Page 1, line 29, after "transparency" insert "or window"
- ✓ Page 2, line 4, before "preparation" insert "oily"
- ✓ Page 2, line 7, after "envelop" insert "or give a ragged appear-  
ance to the window opening"
- ✓ Page 2, line 11, after "envelop" insert "around the window as in
- ✓ Fig. 2" Page 2, line 15, after "indicated" insert "at 5" Page 2,  
line 13, insert "In any event the effect and object of the colored  
border is to give definition to the window opening and obliterate  
or cover up the otherwise rough unfinished outline

of the window resulting from the encroachments of the oil or grease or other substance beyond its desired limits."

Page 2, erase lines 23-24.

Page 2, line 28, after "words" insert "as 4"

Page 3, lines 6-7, change "immense" to "almost limitless"

Page 3, after line 18, insert "Where the window opening is formed by the application of a grease or equivalent compound to the envelop blank the colored or shaded border is essential to the production of a window of properly defined outline"

Page 3, line 26, change "uncolored-lettered" to "associated letters"

Erase the original claims and insert:

1. As a new article of manufacture, an envelop with an unpunctured face of relatively opaque stock, said envelop face having a transparent window and a contrasting border around said window to give definition to the window opening.

-2- As a new article of manufacture, an envelope with an unpunctured face of relatively opaque stock, said envelope face having a portion to which a preparation has been applied to render such portion transparent, and a colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock.

### Remarks:

In view of the amendments now made renewed consideration and favorable action is asked. The claims, as now presented, are drawn to the envelop having the transparent window and also a contrasting border around the window to conceal the effect of the tendency of the preparation used for transparent purposes to creep into the surrounding opaque stock. [616]

D  
Cancelled  
Aug. 6-  
06



This clearly distinguishes our claims from the art cited and relates wholly to an envelop construction. To make this part of the invention fully understood and appreciated, we annex hereto a sample of our envelop as claimed. If desired, Fig. 3 will be amended to show a border surrounding the emblem. At present in Figs. 2 and 4 it is assumed that the entire face of the envelop is colored around the window opening; while in Figs. 1 and 3 there is only a border corresponding to the sample enclosed.

Respectfully,  
MAX M. COHN,  
By T. W. FOWLER,  
His Attorney. [617]

2-260.  
FEF.

Div. 32, Room 38.

Address Only the Commissioner of Patents, Washington, D. C.

Paper No. 3.

All communications respecting this application should give serial number date and filing of invention.

Department of the Interior.  
United States Patent Office,  
Washington, D. C., February 13, 1905.

MAILED

“ “ “

Serial No. 231,886. Paper No. 3.

Rejection.

Div. 32.

M. M. Cohn,  
c/o T. W. Fowler,  
Washington, D. C.

Please find below a communication from the EX-AMINER in charge of your application.

No. 231,886, filed Nov. 8, 1904, "Envelopes."

F. I. ALLEN,

Commissioner of Patents.

The claims presented by amendment of Jan. 6, 1905, is rejected upon the state of the art of record. It is a matter of common knowledge to make envelopes of transparent material. It is a matter of common knowledge to make envelopes having a transparent portion and an opaque portion. It is a matter of common knowledge to render paper or envelopes transparent by treating such paper or envelopes with paraffine or grease. Applicant's so-called border does not differ except in design from the balance of the opaque portion of his envelope. There is believed to be nothing whatever patentable in this application.

JAY F. BANCROFT,

Examiner. [618]

Serial No. 231,886. Paper No. 4.

Letter

Filed Feb. 20-1905.

U. S. PATENT OFFICE,

FEB. 20, 1905.

DIVISION XXXII.

Room 148.

In the matter of the application of

Max M. Cohn,

Envelopes.

Filed November 8, 1904.

No. 231,886.

Commissioner of Patents,

Sir: We greatly fear that the examiner has not yet arrived at the full understanding of this invention. We admit that it is a matter of common knowledge to make envelopes of transparent material. We also admit that it is a matter of common knowledge, broadly, to make an envelope a generally opaque body having a transparent window or opening. It is also not new to render paper transparent by treating it with grease and which proposition is included in the one second above noted. We therefore agree with the examiner's holding as to such matters, but beyond this we do not go. These points, however, do not include the essential part of this invention and there is nothing in the record as made out by the examiner which anticipates this remaining, essential and, we submit, absolutely new feature of our envelope. When the grease is applied to a piece of paper say to an envelope to form a window or transparent opening, the grease spreads in irregular lines

into the body of the body outside of reserved window or transparent portion and obliterates all well defined definition of the opening. The examiner will find this to be true in the samples we have on file. To cure the known objection stated and to cover up the signs of "creeping" or "bleeding" of the grease or preparation into the surrounding body of the paper and to thereby give definition to the window opening and present smooth finished edges as distinguished from ragged edges due to "creeping" or "bleeding" we avail ourselves of a [619] novel tinted or colored border around the window opening and which border is applied over the irregular lines left by the spreading of the grease or the encroachments of the oil or grease beyond the desired limits. This border is generally sharply distinguished from the colored or opaque body of the envelope and it gives finish and added attractiveness to the envelope as a whole. This border is new, and the examiner has shown no reference to it; it is useful, because it gives definition to the window and covers up the ragged and undesirable lines which exist because of the grease used in making the window area transparent and being both new and useful it is necessarily patentable, as an advance in the art.

In view of the foregoing we submit, that no art is cited for an article of manufacture having the combined characteristics noted in our claims; and the article being an entity we do not think its component parts should be dissected and then the whole rejected because the said parts are, some of them, old.



Reconsideration is asked and a specific application of the art to the border and its modifying effects upon the irregular lines left after rendering the window space transparent.

Respectfully,

MAX M. COHN,

By T. W. FOWLER,

His Attorney. [620]

2-260.

FEF.

DIV. 32, Room 148.

Address only The Commissioner of Patents Washington, D. C.

Paper No. 5.

All communications respecting this application should give serial number date of filing and title of invention.

Department of the Interior,

United States Patent Office,

Washington, D. C., March 28, 1905.

MAILED

“ “ “

Serial No. 231,886 Paper No. 5.

Rejection.

Div. 32.

M. M. Cohn,

c/o T. W. Fowler,

Washington, D. C.

Please find below a communication from the EXAMINER in charge of your application.

No. 231,886, filed nov. 8, 1904, "Envelopes."

F. I. ALLEN,

Commissioner of Patents.

The application above entitled has been further considered in connection with applicant's argument of Feb. 20, 1905.

Notwithstanding the applicant's argument the claim is still deemed to be unpatentable over the references of record and for the reasons stated. The claims are therefore each a second time and finally rejected.

JAY F. BANCROFT,  
Examiner. [621]

Serial No. 231,886.

Paper No. 6.

APPEAL.

Name, Cohn, M. M.

Filed Nov. 8, 1906.

Title, Envelopes.

TO EXAMINERS-IN-CHIEF.

Reasons for appeal, February 28-1906.

Examiner's statement, March 22-1906.

Notice of hearing, May 28-1906, 1.30 P. M.

Brief, April 5-1906.

Decision of Examiner affirmed, April 18-1906.

Notice of decision, April 18-1906.

TO COMMISSIONER.

Received July 6-1906.

Brief,

Notice of hearing, July 11-1906.

Decision, of Examiner-in-Chief affirmed as to claim

1 and reversed as to claim 2, August 1-1906.

Notice of decision, August 1-1906. [622]

Department of the Interior,  
United States Patent Office,

Washington, D. C., March 6, 1906.

MAILED

“ “ “

Serial No. 231,886. Paper No. 7.

Rejection.

Div. 32.

M. M. Cohn,

c/o T. W. Fowler,

Washington, D. C.

Please find below a communication from the Examiner in charge of your application,

No. 231,886, Filed Nov. 8, 1904, "Envelopes."

F. I. ALLEN,

Commissioner of Patents.

Consideration of the application above entitled with a view of forwarding the appeal filed discloses the fact that applicant has not been advised as to the complete state of the art. In addition to the rejection previously given, the claims are each rejected upon the British patent to:

Cohn, 14,478, June 27, 1904.

Attention is called to patent to:

Brown, 36,393, Sept. 9, 1862 (Envelopes, Display).

In view of these additional references, which should have been cited earlier in the prosecution of the case, applicant is at liberty to withdraw his appeal, or such appeal will be promptly forwarded upon applicant's request.

JAY F. BANCROFT,

Examiner. [623]

Serial No. 231,886, Paper No. 6.

Letter

Filed Mar. 13-1906.

U. S. PATENT OFFICE,

MAR. 13, 1906.

DIVISION XXXII.

Room 148.

In the Matter of the Application of

Max M. Cohn,

Envelopes.

Filed November 8, 1904.

No. 231,886.

Washington, D. C., March 13, 1906.

Commissioner of Patents,

Sir: The Examiner's action in refusing to recognize his own final rejection now nearly one year old and his citation of a further reference, after appeal, is very annoying to applicant, especially when the new reference has no bearing upon the appealed claims as a bare inspection of said claims and reference shows. The Cohn patent is a British patent to this same applicant. It is not for the same invention as called for in this former foreign patent in his oath forming part of this application. The present invention and claims depend for novelty upon "a contrasting border around said window to give definition to the window opening" (claim 1); "and a colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock" (claim 2).

The British patent to applicant does not disclose



this feature, and the only effect of citing such a patent is to delay the appeal which has been filed in good faith, and to include in the file contents a reference to a patent which is not in point.

The Brown patent is not cited in rejection but is only called to our attention. We therefore do not treat it as a [624] reference; and, apparently, the examiner himself does not so consider it.

Applicant declines to withdraw his appeal and insists that the same shall be answered within the time required by the rule.

Attention is also called to Rule 64 concerning the citation of references.

Respectfully,

MAX M. COHN,  
By T. W. FOWLER,  
His Attorney. [625]

Serial No. 231,886. Paper No. 9.

Amendment. E.

Filed Aug. 6-1906.

U. S. PATENT OFFICE.

AUG. 6, 1906.

DIVISION XXXII.

Room 148.

In the matter of the application of

Max M. Cohn,

Envelopes.

Filed Nov. 8, 1904.

No. 231,886.

Washington, D. C., Aug. 6, 1906.

Commissioner of Patents,

Sir: The above entitled application is hereby

amended as follows:

Cancel Claim 1.

Respectfully,

MAX M. COHN,

By T. W. FOWLER,

His Attorney. [626]

Here follows formal printed letter of allowance and printed copy of specification and drawings of the patent as issued. [627]

Serial No. 27,349. Paper No. 2.

Examiner's Statement.

U. S. PATENT OFFICE,

MAR. 22, 1906.

MAILED.

DEPARTMENT OF THE INTERIOR,  
UNITED STATES PATENT OFFICE,

Washington, D. C., March 22, 1906.

Before the Honorable The Examiners-in-Chief.

In re application Max M. Cohn,

Serial No. 231,886.

Filed Nov. 8, 1904.

Envelops.

Attorney—T. W. Fowler, Washington, D. C.

#### EXAMINER'S STATEMENT.

The Claims appealed are as follows:

1. As a new article of manufacture, an envelop with an unpunctured face of relatively opaque stock, said envelope face having a transparent window and a contrasting border around said window to give definition to the window opening.

2. As a new article of manufacture, an envelope with an unpunctured face of relatively opaque stock, said envelope face having a portion to which a preparation has been applied to render such portion transparent, and a colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock.

These claims stand rejected on the British patent to Cohn and Shipp, 14,478, June 27, 1904, in connection with patent to Brown, 36,393, Sept. 9, 1862, and such claims also stand rejected upon the state of the art shown in British patent to Busch, 11,876, June 1, 1896.

This applicant first treats the semi-transparent material of the envelope with a preparation which has the property of rendering transparent the portion of the material to which it is applied. The remaining portion or part of the remaining portion [628] of the envelope blank is then "imprinted with a suitable opaque coloring matter." This imprinting forms around the transparent space what applicant terms a "contrasting border" in claim 1, and a colored or tinted border in claim 2. In claim 2 he further sets forth that the colored border surrounding the transparent portion is for the purpose of concealing the preparation applied to render the paper transparent if any of the preparation may have soaked into the paper beyond the limits intended for the transparent portion or so-called window.

It is to be noted that claim 1 is not limited to having the transparent window produced by the application of a preparation such as a paraffine oil or the like as set up in the description. Claim 1 is therefore fully anticipated in the British patent to Cohn and Shipp, above cited. For instance, Figure 4 of the British patent shows an envelope with an unpunctured space of relatively opaque stock, said envelope having a transparent window (2) and a contrasting border around the said window of colored ink or pigment.

It is noted that the British patent to Cohn and Shipp does not set forth how the transparent portion of the envelope is formed. The patent to Brown states that the transparent portion or window in his envelope may be made by the same means or substance as is employed for making tracing paper, &c. To print a surrounding border with colored ink or pigment around the transparent portion of Brown's envelope in the same way that Cohn and Shipp print a border around their transparent portion would not involve invention.

Attention is called to the fact that the application oath of this applicant states that he has no foreign patents; applicant's attorney contends in argument that the British patent to [629] Cohn and Shipp is Cohn's invention, but that it is not the same invention as that covered by the claims now appealed.

It would therefore appear that until Cohn establishes by proper oath the fact that the British patent referred to is his, it must be held to be a valid reference for the claims.



The British patent to Busch above cited discloses an envelope having a transparent window comprising a portion of the front of the envelope surrounded by an opaque border, such border being formed by "printing with opaque coloring matter." Thus it is clear that this patent anticipates every letter of claim 1. Busch does not set forth that he forms his transparent portion by the application of paraffine or the like. Such procedure is clearly set forth by Brown, however. To print a colored border with opaque coloring matter around the transparent portion of Brown's envelope would not constitute a new invention.

It is noted that the sample envelope filed with amendment of January 6, 1905, shows the opaque portion of the envelope lying immediately next the transparent portion of a darker color or more heavily printed than the remaining portion of the opaque border. This contrasting difference in the opaque portion of the envelope is not involved in the claims nor is it set up in the description, but has been referred to by the attorney in his argument. This, however, is a mere matter of a judicious use of printer's ink and a matter of design.

It is respectfully submitted that the claims are not patentable.

JAY F. BANCROFT,

Examiner.

Div. 32. [630]

Appeal No. 27,349. Paper No. 5.

## BRIEF.

In the United States Patent Office.

Before the Examiners-in Chief.

On Appeal.

EXAMINERS-IN-CHIEF.

Apr. 5-1906.

U. S. PATENT OFFICE.

In re application Max M. Cohn,

Envelope.

Filed November 8, 1904.

No. 231,886.

The invention involved in this appeal is an envelope which has become very popular of late and is now extensively manufactured. Prior to this invention it was not new to construct an envelope with a window or transparent portion adapted to disclose an address on an enclosed sheet, therefore the present invention is but an improvement and advance in the art to which it relates, which improvement is clearly and sharply defined in the following appealed claims:

1. As a new article of manufacture, an envelope with an unpunctured face of relatively opaque stock, said envelope face having a transparent window and a contrasting border around said window to give definition to the window opening.

2. As a new article of manufacture, an envelope with an unpunctured face of relatively opaque stock, said envelope face having a portion to which a preparation has been applied to

render such portion transparent, and a colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock.

An analysis of these claims will show, (claim 1) that the envelope claimed must have (1) an unpunctured face of (2) relatively [631] opaque stock, having (3) a transparent window and (4) a CONTRASTING BORDER AROUND SAID WINDOW TO GIVE DEFINITION TO THE WINDOW OPENING; and (claim 2) SAID (opaque) ENVELOPE FACE HAVING A PORTION TO WHICH A PREPARATION HAS BEEN APPLIED TO RENDER SUCH PORTION TRANSPARENT, AND A COLORED OR TINTED BORDER SURROUDING SAID TRANSPARENT PORTION FOR THE PURPOSE OF OBLITERATING OR CONCEALING THE EFFECTS OF THE TENDENCY OF THE SAID PREPARATION TO CREEP INTO THE SURROUNDING OPAQUE STOCK.

The novelty of this invention is in providing a colored or tinted border surrounding a window portion which has been made transparent by some preparation which, because of its oily character, will creep into the surrounding opaque stock and give a ragged and unsightly outline to the transparent window, and I submit that neither of the references cited has any bearing upon such a feature or offers any suggestion of the same.

Two types of envelopes having transparent windows are well known to the art. In one, the envelope blank is punctured to form a window opening, and from a separate sheet of transparent paper there is cut a blank of the shape of said window opening which blank is subsequently pasted to the inner face of the envelope over the opening. Such a construction is open to several serious objections, such as the extra cost in "puncturing" the face of the envelope; the cutting of the transparent blank, and the pasting of said blank to the inner face of the envelope; but more especially is there the objection of imperfect pasting and the consequent presence of raw edges to be caught and torn by cancelling machines or in the other handling of the mail.

There is also the liability of the paste becoming soft and "sticky" in the presence of moisture and the possibility of the inner or enclosed sheet adhering to the pasted envelope. [632]

Another form of envelope having the window opening is made of unpunctured substantially transparent stock, and the body of the envelope outside the window being rendered opaque by printing with opaque coloring matter.

A third type uses an opaque stock with an unpunctured window portion, which is rendered transparent by the use of a preparation of oily matter. To this third class of envelopes my invention is directly related and which makes desirable the surrounding contrasting border to conceal the effects of the tendency of the oily matter to creep into the surrounding opaque stock, and thereby give definition to the window opening.



The examiner is very unfortunate in his citation of references, for the patents cited are certainly not in point for my invention or claim.

The British patent to Cohn & Shipp, 14,478, June 27, 1904, is applicant's own invention; it is identical with applicant's other pending case filed May 9, 1904, serial number 207,082. It does not disclose, or even remotely suggest, the present invention, for which reason *application* has not mentioned his British patent in the oath to the present case; no oath reciting the said British patent is necessary, because the inventions are NOT the same, and reference to foreign patents to the same applicant is only required when the invention covered thereby IS THE SAME as the invention disclosed in the United States application.

The British patent to applicant does not use and does not describe a border surrounding a window which has been made transparent by a preparation which will "creep" into the opaque stock. The British patent described an envelope made of substantially transparent stock, the back of the face of which is rendered opaque by some coloring matter, leaving the window uncolored. [633]

As there is used no preparation which will "creep" into the opaque stock, there is no use for the surrounding border to conceal such creeping, and give definition to the window opening.

I respectfully submit that the patent is not in point for this invention or the claims appealed.

The patent to Brown, 36,393 is only cited to show a window which is made transparent by some sub-

stance such as is employed for making tracing papers. This we admit is old in an envelope, but it is this very method of making the transparent window which calls into play the border of contrasting color which is applied over and conceals the ragged lines left by the reason of the oily matter creeping into the opaque stock of the envelope.

Although we disclose new and useful advantages for this border and we have made the Brown type of envelope a commercial success, so much so that the improved envelope is now being extensively made and sold, the examiner, failing to find a satisfactory reference, takes the position that.

“To print a surrounding border with colored ink or pigment around the transparent portion of Brown’s envelope in THE SAME WAY THAT COHN & SHIPP PRINT A BORDER AROUND THEIR TRANSPARENT PORTION WOULD NOT INVOLVE INVENTION.”

The reference to “the way” that Cohn & Shipp print a border around their transparent portion, is misleading. We deny that the Cohn & Shipp patent has ANY border or requires any from the very nature of the material from which the envelope is made.

What the examiner evidently means by “border” is the print-*printing* on the inner side of the envelope to render the whole envelope outside the window opaque; but my “contrasting border” is claimed as an addition to a “relatively opaque stock,” therefore no merit attaches to the misleading statement referring to applicant’s British patent. [634]

The remaining reference, British patent to Busch, 11,876, of 1896, has a portion of the whole of the envelope transparent. The front is transparent while the back is opaque, or a portion only of the front may be transparent. The patentee says,—

“The desired contrast or difference may be produced either by choosing TWO DIFFERENT KINDS of paper, or by printing with opaque coloring matter applied to a portion of the envelope.”

The “two different kinds” of paper means pasting one part to the other; and the printing with coloring matter must refer to printing on normally transparent paper.

In any event there is present no border co-operating with the window to give the new and useful results we describe.

The examiner does not affirmatively state that the art cited discloses our border; and he implies in the concluding part of his statement that this contrasting border “is not involved in the claims nor is it set up in the description.” In this he is clearly wrong for the description is complete of this feature and its purposes, and both claims appealed make this border the essential and prominent feature.

In view of the foregoing it is respectfully submitted that the examiner’s action is erroneous and it should be reversed.

Respectfully submitted,

MAX M. COHN,

By T. W. FOWLER,

His Attorney. [635]

Recorded Vol. 78, p. 380.

Appeal No. 27/349. Paper No. 6.  
Decision.

Appeal No. 27,349.

U. S. Patent Office, April 18, 1906.

Before the Examiners-in-Chief, on Appeal.

Application of Max M. Cohn for a patent for an improvement in Envelopes, filed November 8, 1904. Serial No. 231,886. Messrs. T. W. Fowler and Geo. H. Strong for appellant.

This is an appeal from the rejection of the following claims:

“1. As a new article of manufacture, an envelop with an unpunctured face of relatively opaque stock, said envelop face having a transparent window and a contrasting border around said window to give definition to the window opening.

2. As a new article of manufacture, an envelop with an unpunctured face of relatively opaque stock, said envelop face having a portion to which a preparation has been applied to render such portion transparent, and a colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock.”

The references are:

Brown, Sep. 9, 1862, No. 36,383.

British to Cohn et al., No. 14,478, June 27, 1904.

“ “ Busch, No. 11,876, June 1, 1896.

The alleged invention relates to the class of envel-



opes in which the address is not written on the envelop itself but on a paper inside of the envelope and is read through the transparent surface thereof. The appellant starts with an opaque material and by treating a portion thereof makes a transparent window therein at the point where the address is to appear. It is said that the preparation used in treating the material to make the transparent window cannot be applied in such way as to make a clear cut and regular outline for the window but will [636] creep and make an irregular and rough outline. To hide this rough outline and leave a transparent window of symmetrical and regular shape the appellant applies a colored border to the surface around the window. The supposed invention here resides in placing this border around the window.

The patent to Brown says:

“The improvement is to make the envelope or wrapper transparent sufficiently to clearly show the cards of address through its face. There may be only a transparent portion B large enough to exhibit the ‘direction’ through it; and this may be made either by rendering a portion of the envelope or wrapper itself transparent by the same means or substances as employed for making tracing paper or any other in the process of manufacturing the paper, or the envelope, leaving the remainder of the envelope opaque. Or a piece of the envelope of the proper size and shape, may be cut out of the envelope; and the aperture thus made covered with transparent paper or other equivalent transparent covering.”

It is obvious that by following the directions first stated an envelope of the same construction as the appellant's is produced. The appellant has merely added a colored border for the purpose of ornamentation.

In the patent to Cohn et al. is described an unpunctured envelope having a transparent window surrounded by a portion to which dark colored ink has been applied. This is also true of Busch. The border in this case seems to extend to the edge of the envelope but it is nevertheless a contrasting border. Its purpose is, like that in the appellant's case, to have a transparent window regular in outline and of the shape desired. If the transparent material extends to the edge of the envelope it is necessary to extend the ink covered surface to the edge whereas if the transparent portion does not extend so far it is not necessary to extend the ink so far. It may then be applied in the shape of a border sufficiently wide to cover the edges of the transparent portion. The purpose, function and idea of [637] means seems to be the same in both cases. The rough edges of the transparent portion would be concealed just as well by coating all of the balance of the envelope with dark colored ink and the only purpose of substituting a narrower border seems to be to get a different artistic effect. There is no mechanical advantage or utility in it. It is a mere matter of design.

The claims are lacking in patentable novelty in view of the references cited and therefore the decision

of the primary examiner is affirmed.

JOHN M. COIT,

J. H. BRICKENSTEIN,

T. G. STEWARD,

Examiners in Chief. [638]

Serial No. 241,459. Paper No. 1/2

Application.

Filed Jan. 17-1905.

\$15 RECEIVED

JAN. 17-1905.

CHIEF CLERK, U. S. PATENT OFFICE.

Petition.

To the Commissioner of Patents:

Your petitioner Max M. Cohn citizen of the united states and resident of the City and in the County of San Francisco and State of California whose post office address is 416 Sansome St San Francisco California prays that letters patent may be granted to him for the improvement in Envelops set forth in the annexed specification; and he hereby appoints GEO. H. STRONG, of San Francisco, Cal., whose register number is 1537, and T. W. FOWLER, of Washington, D. C., whose register number is 144, his Attorney, with full power of substitution and revocation to prosecute his application, to make alterations and amendments therein, to receive the Patent, and to transact all business in the Patent Office connected therewith.

Signed at the City and County of San Francisco in the County of                      and State of California this Third day of January, 1905.

MAX M. COHN.

Note: Please direct all correspondence to T. W. Fowler, Washington, D. C.

Specification.

To All Whom it May Concern:

Be it known, that I Max M. Cohn a citizen of the United States residing in the city and ~~in the~~ County of San Francisco and State of California, have invented new and useful improvements in Envelops of which the following is a specification, being a division of my original application, "Envelop" filed Nov 8th 1904, Serial No. 231,886, entitled— [639]

My invention relates to an envelop having a transparent space or window in its face through which the name and address on an enclosure may show through.

of

The objection ~~tion to~~ this invention is to so design the window opening and to associate with said window such descriptive matter, as will offer novel and unique possibilities for advertising.

The invention consists of the parts and the construction and combination of parts as hereinafter more fully described and claimed, having <sup>reference</sup> ~~reference~~ to the accompanying drawings, in which—<sup>Λ</sup>

Fig. 1 shows an envelop, to a portion of which a preparation has been applied to render said portion transparent, and about which transparency is a colored border to cover up the effects of the bleeding.

1 2

Figs. 2 and 3 show my intention in its application to specific brands of goods.

In carrying out my invention I take a blank sheet

Emitted  
May 2 '06.

May 8 '06



of paper or an envelop blank of suitable strength and texture which is, say, semi-transparent, and apply to a portion of one side of the blank, generally on the inside, a preparation which has the property of rendering transparent the portion to which it is applied. The remaining portion, or a part of the remaining portion, of the blank which forms the face of the finished envelop A is then imprinted with a suitable opaque coloring matter.

I employ a compound or preparation, such as paraffine oil and resin, or a grease, which produces the desired result of rendering a semi-transparent paper transparent. This preparation [640] is stamped or printed on or otherwise applied to the blank to provide the transparency or window of the desired design, and it is applied to such part of the blank where the transparency is desired to appear on the face of the envelop and it may cover a larger or a lesser space according to the desired size of the transparency or window.

Since the oily preparation has a tendency to creep or "bleed" beyond the borders of the space imprinted by the stamp or die by which it is applied and so possibly stain or discolor the rest of the envelop, or give a ragged appearance to the window opening, it is preferred even where the paper might ordinarily be deemed sufficiently opaque, to apply some sort of coloring matter at least around the immediate border or the transparency. This coloring matter may be applied solid over the face of the envelop, or it may take the form of graduated tints or of being shaded, or the representation of a surrounding border, or cloud effect, as indicated at 3 in Fig. 1.

In any event the effect and object of this colored border are to give a definition to the window opening and obliterate or cover up the otherwise rough unfinished outline of the window, resulting from the encroachments of the oil or grease, or other substance beyond its desired limits.

Usually and perhaps preferably the preparations and coloring matter are applied on the opposite sides of the blank; the preparation on the inside and the coloring on the outside.

Developing out of this idea of making an unpunctured envelop with a window or transparency for the addressee's name to appear through, is the idea of changing the form or outline of this transparency to correspond with the trade mark design, or advertised object of a merchant, manufacturer, advertiser or other person, company or firm. [641]

In Figs. 2 and 3 are shown possible modifications of this idea adapted to advertising purposes in which the transparency is made to assume the shape of some advertised article, trade mark or the like, together with certain letters or words as standing out uncolored and non-transparent in the generally opaque surrounding border.

Cancelled  
May 2-06

May 2-'06.

1

Fig. 2 shows a transparency in the shape of a cucumber, the trade mark of a well known manufacturer of a great many varieties of goods. Fig 3 shows a cigar in transparency and the words "Blanco-Cigar" in non-transparency on colored opaque field.

The number of shapes this transparency may take

is almost limitless; different people might use an envelop with a window in the shape of an oyster, a cake fish, a ~~cake~~ of soap and other toilet articles, a casket, a dress-shield, a biscuit, an article of hardware and other articles of manufacture, and so on indefinitely, having due regard for the necessary size of the transparency so as not in any way to interfere with the clear showing up of the addressee's name inside. The essential feature in this connection is a window which in general outline is characteristic of a symbol of trade. By symbol of trade is meant any design such as mentioned above, or trade mark characteristic of certain goods or the product of a certain manufactory.

When the window opening is formed by the application of a grease or equivalent compound to the envelop blank, the colored or stained window is essential to the production of a window of properly defined outlines.

I thus produce a most unique and at the same time inexpensive [642] and attractive advertising medium. Every one needs envelops. These advertising envelops can be made at small expense. They can be made of any shape or size and made to fit the stationery rather than the stationary to fit the envelop. They can be used not only for mailing, but for sending out circulars and the like by messenger. The characteristically shaped window and the associated letters and colored background constitute a most striking advertisement to attract public attention, the object of all advertising.

I do not wish, however, to limit myself in the application to this idea of an envelop having a window which in outline is characteristic of a symbol of trade, to envelops made originally from non-transparent stock as above described, for I may employ a transparent stock and form the window opening by printing with, or otherwise applying opaque coloring matter to a portion of the envelop.

Generally the window opening by itself alone, and unassociated with any descriptive matter or words forming an essential feature of the trade mark would have very little significance as referring to a particular manufacturer. For instance, a window in the outline of a bolt might refer to many bolt manufacturers, or a window in the shape of a cigar unassociated with a trade name would be meaningless; but when there is associated with the window opening of characteristic or peculiar design a trade name or some word or words usually associated with or relating to the pictorial feature every one seeing the envelop is confronted with a striking advertisement of a particular brand of goods, of a particular merchant or firm. At the same time the envelop not only performs its ordinary function as a closure, but the transparent portion of the envelop [643] allows the name and address on the enclosure to show through, protects the writing thereon, and obviates the necessity for an address on the exterior of the envelop.

Having thus described my invention, what I claim and desire to secure by Letters Patent is—

1st. An advertising device comprising an envelop having a window through which the addressee's name



on an enclosure may show through, said window being in outline characteristic of some symbol of  
May 4-'05. and giving definition to

trade, a tinted or colored border surrounding said  
Λ

permanent

May 4-'05. window and advertising matter forming  
Λ  
no part of the address, appearing on said

May 4-'05. and in juxtaposition with  
tinted border, and related to the outline of said  
Λ  
window.

2nd. As an advertising device, an envelop having a generally opaque face except for a transparent window portion through which an addressee's name on an enclosure may show through, said window being in general outline characteristic of a symbol of

permanent

May 4-'05. trade, and printed matter on the face of  
Λ  
and in juxtaposition with

May 4-'05. the envelop related to the outline of the  
Λ  
window and co-operating with said outline to indicate a particular brand of goods.

In Testimony Whereof I have hereunto set my hand in presence of two subscribing witnesses.

MAX M. COHN.

J. M. ELLIS.

S. THORP. [644]

OATH.

State of California,

County of San Francisco,—ss.

Max M. Cohn the above-named petitioner, being sworn (or affirmed), deposes and says that he is a

citizen of United States, and resident of the City and in the County of San Francisco and State of California; that he verily believes himself to be the original, first, and sole inventor of the improvements in Envelops described and claimed in the annexed specification; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, or patented or described in any printed publication in any country before his invention or discovery thereof, or more than two years prior to this application, or patented in any country foreign to the United States on an application filed more than twelve month before this application, or in public use or on sale in the United States for more than two years prior to this application; and that no application for patent on said improvements has been filed by him or his representatives or assigns in any country foreign to the United States.

MAX M. COHN.

Sworn to and subscribed before me the 3d day of January, 1905.

[Notarial Seal] JAMES M. ELLIS,  
Notary Public in and for the City and County of San  
Francisco, State of California. [645]

Department of the Interior,  
United States Patent Office,  
Washington, D. C., March 20, 1905.

MAILED

“ “ “

Serial No. 241,459. Paper No. 1.

Rejection.

DIV. 32.

M. M. Cohn,  
c/o T. W. Fowler,  
Washington, D. C.

Please find below a communication from the EX-AMINER in charge of your application.

No. 241,459, filed Jan. 17, 1905, “Envelope.”

F. I. ALLEN,

Commissioner of Patents.

The claims presented are rejected upon British patent to Watts, 7955, Apr. 22, 1895 (Paper Vessels, Boxes, Display), when taken with that to Busch, 11,876, July 4, 1896 (229-71).

The first shows that it is old to make the transparent openings in envelopes of various configurations and designs; while the Busch reference discloses applicant's specific construction so far as defined by the claims.

GEO. P. TUCKER,

Asst. in Chg.

R. C. F. [646]

Serial No. 241-459. Paper No. 2.

Amendment A.

Filed May 5, 1905.

U. S. PATENT OFFICE,

May 5, 1905.

DIVISION XXXII.

In the Matter of Application of

Max M. Cohn,

Envelope.

Filed January 17, 1905.

No. 241,459.

Commissioner of Patents.

Sir: The above entitled application is hereby amended as follows:

Claim 1, line 5, before "said" insert "and giving definition to" and same line, after "and" insert "permanent."

Claim 1, line 6, after "to" insert "and in juxtaposition with."

Claim 2, line 5, before "printed" insert "permanent" and line 6, after "related to" insert "and in juxtaposition with."

## Remarks:

Reconsideration and favorable action is asked as this invention seems clearly patentable. We are not claiming an envelope with a transparent opening but we are claiming an opening of a particular kind which serves not only the function of the window of Busch but is also descriptive of some known article of trade. Thus we convert Busch's address window into a valuable advertising feature while preserving all that Busch can possibly claim for his window. We thus obtain a new result since we ob-



tain a valuable advertising advantage without detracting from the view of the addressee's name. But this alone is not sufficient and is not only what our claims call for. The point that must be kept in mind all the time is the COMBINATION of the PECULIARLY SHAPED window and the correlative permanent printed matter on the envelope explanatory of and in juxtaposition with the said opening. For instance, a cigar-shaped window has no especial [647] significance but when the word "Premo" or "Blanco" or some other suitable trade name is printed on the face of the envelope in juxtaposition with the window opening, the ENTIRE design has a special significance, for the arrangement considered as a whole presents a novel and useful way of expressing some well known name of trade-mark. In view of the foregoing we submit that upon reconsideration our claims should be allowed.

Respectfully,

MAX M. COHN,

By T. W. FOWLER,

His Attorney. [648]

Department of the Interior,

United States Patent Office,

Washington, D. C., May 25, 1905.

MAILED

" " "

Serial No. 241,459. Paper No. 3.

Rejection.

DIV. 32.

M. M. Cohn,

c/o T. W. Fowler,

Washington, D. C.

Please find below a communication from the EX-

AMINER in charge of your application.

No. 241,459, filed Jan. 17, 1905. "Envelope."

F. I. ALLEN,

Commissioner of Patents.

This action is in response to applicant's amendment filed May 5, 1905.

The claims presented are rejected upon British patent to Cohn, 14,478, June 27, 1904 (229-71) attention being directed to the oath herein and in the parent case of which this is stated to be a division. Moreover, the claims are rejected upon the art of record.

JAY F. BANCROFT,

Examiner.

R. C. F. [649]

Serial No. 241,459. Paper No. 4.  
Letter.

Filed Feb. 21, 1906.

U. S. PATENT OFFICE,

FEB. 21, 1906.

DIVISION XXXII.

Room 148.

In the Matter of the Application of

M. M. Cohn,

Envelope.

Filed Jan. 17, 1905.

No. 241,459.

Washington, D. C., Feb. 21, 1906.

Commissioner of Patents,

Sir: As it is still believed that this application contains patentable subject-matter and that the claims now in the case express the invention, we respectfully ask reconsideration and final action

with a view to an appeal to the examiners-in-chief.

Respectfully,

MAX M. COHN,

By T. W. FOWLER,

His Attorney. [650]

Department of the Interior,

United States Patent Office,

Washington, D. C., March 2, 1906.

MAILED “ “ “

Serial No. 241,459. Paper No. 5.

Rejection.

DIV. 32.

M. M. Cohn,

c/o T. W. Fowler,

Washington, D. C.

Please find below a communication from the EX-AMINER in charge of your application.

No. 241,459, filed Jan. 17, 1905, "Envelopes."

F. I. ALLEN,

Commissioner of Patents.

Applicant's communication of Feb. 21, 1906, has been received. The further consideration and final action requested in such communication cannot be given until applicant has complied strictly with Rule 69. The communication referred to is in no manner responsive to the rejection given May 25, 1905.

Attention is called to the following patents not heretofore of record, which will be referred to should applicant appeal the rejected claims:

Brown, 36,393, Sept. 9, 1862 (229-71).

Callahan, 701,839, June 10, 1902 (Same class).

JAY F. BANCROFT,

Examiner. [651]

Serial No. 241,459.

Paper No. 6.

## APPEAL.

Name, Max M. Cohn.

Filed, Jan. 17, 1905.

Title, Envelope.

## TO EXAMINERS-IN-CHIEF.

Reason for appeal, March 2, 1906.

Examiner's statement, March 22, 1906.

Notice of hearing, Apr. 6, 1906.

Brief, Apr. 5, 1906.

Decision,

Notice of decision, Exr. reversed, Apr. 13, 1906, cls. 1  
& 2 appd.

## TO COMMISSIONER.

Received,

Brief,

Notice of hearing,

Decision,

Notice of decision, [652]

Serial No. 241,459. Paper No. 7.

Letter.

Filed Mar. 13, 1906.

U. S. PATENT OFFICE,

MAR. 13, 1906.

DIVISION XXXII.

In the Matter of the Application of

MAX M. COHN,

Envelopes.

Filed January 17, 1905.

No. 241,459.

Washington, D. C., March 13, 1906.

Commissioner of Patents.

Sir: Answering the examiner's letter of March 2,



1906, we beg to say that the British patent to applicant No. 14,478 of 1904 cited in the office letter of May 25, 1905, was not viewed by applicant as possessing any of the real invention claimed in this case and as entitled to serious consideration.

We really wonder that the examiner will cite such a patent for claims which are for such matter as "said window being in outline characteristic of some symbol of trade, a tinted or colored border surrounding and giving definition to said window and permanent advertising matter forming no part of the address, appearing on said tinted border, and in juxtaposition with and related to the outline of said window."

Not one of these features appear in applicant's British patent cited; and we wonder that said patent is seriously considered as a reference for our claims. If the British patent was for the same invention as that disclosed in this case, the applicant's oath would have shown this fact. As it is not for the same invention it requires no further attention from us, as it does not even remotely disclose what our claims call for, as above pointed out. [653]

As to the Brown and Callahan patents, they are not cited in rejection of our claims but only to show the state of the art. They, therefore, do not require specific answer on our part. We have thus complied with the technical requirements of Rule 69 and request that final rejection be given and our appeal be answered.

Respectfully,  
MAX M. COHN,  
By T. W. FOWLER,  
Atty. [654]

Department of the Interior,  
United States Patent Office,  
Washington, D. C., April 27, 1906.

MAILED “ “ “

Serial No. 241459. Paper No. 8.

~~Rejection~~ Letter

DIV. 32.

M. M. Cohn,  
C/O T. W. Fowler,  
Washington, D. C.

Please find below a communication from the EX-AMINER in charge of your application.

No. 241,459, filed Jan. 17, 1905, “Envelope.”

F. I. ALLEN,

Commissioner of Patents.

Upon consideration of the application above entitled in connection with the decision of the Examiners-in-Chief, it is found that Figure 1 of the drawing must be eliminated as not being covered by the claims, such figures not showing a window having a general outline of a “symbol of trade.”

Figure 2 should likewise be eliminated for the reason that such Figure does not show any printed matter or permanency advertising matter related, in significance, to the pickle outline of the window. It is not seen that there is any connection whatever between John Doe and the pickle, nor is it seen that the words “57 varieties” are in any way “related to” or “associated with” the pickle-shaped outline of the window.

The only printed matter or advertising matter shown on the drawing that can be said to be in any

way related to or associated with the outline of the window shown is the word "Cigar" in Figure 3.

The description should be correspondingly revised.

JAY F. BANCROFT,

Examiner. [655]

Serial No. 241,459. Paper No. 9.

Amendment B.

Filed May 2, 1906.

U. S. PATENT OFFICE.

MAY 2, 1906.

DIVISION XXXII.

In the matter of the application of

Max M. Cohn,

Envelopes.

Filed Jany 17, 1905.

No. 241,459.

Washington, D. C., May 2, 1906.

Commissioner of Patents.

Sir: The above-entitled application is hereby amended as follows:

Cancel Fig. 1 of the drawing and the description of the same in lines 12 to 15 inclusive of page 1.

Page 1, line 16, change "2 and 3" to "1 and 2."

Page 3, cancel the descriptions in lines 2 to 7 inclusive.

Page 3, line 8, change "2" to "1."

Page 3, line 10, change "3" to "2."

Remarks:

Having made the foregoing amendments we hope the examiner will send this case to issue without raising other objections, after appeal and decision. Applicant withdraws his Fig. 1 and thereby gives the

Examiner the benefit of his objections to that figure; but he declines to cancel Fig. 2 as there is no valid reason for his doing so. This figure shows an advertisement which is national in its character, and almost any child in the primary grades of our schools knows what the representation of the pickle and the words "57 varieties" means. "Heinz 57 varieties" is a trade expression well known to nearly every one, but the name "Heinz" being personal in its character, the office will object to this name appearing as an advertisement on the drawings of patent. For this reason we have substituted the [656] fictitious name "John Doe" in lieu of "Heinz"; and the examiner is in no position to say that "John Doe" is not the packer of "57 varieties of pickles, and that this name, or any other name, or symbol representing an article of trade is not properly included with a recognized descriptive design of the window opening under the recent decision of the examiners-in-chief. In original Fig. 2, the pickle-shaped window—and the examiner seems to readily recognize the shape—is representative of an article of trade; and the printed matter "John Doe" and "57 varieties" and any other descriptive phrase, as "It works while you sleep" a trade expression for Cascarets and associated with a window shaped like a cascairet, is related to or associated with the window to indicate a particular brand of goods.

We hope the examiner will take this view of the matter and save us the annoyance of further action after we have accepted his former final rejection and have appealed this case and the appeal has been sustained.



( The examiner is respectfully requested to  
(change the designation "Figs. 2 and 3" on the  
(drawing to "Fig. L" and "Fig. 2" respectively.

Respectfully,

MAX M. COHN,

By T. W. FOWLER,

His Attorney. [657]

Here follows formal printed letter of allowance  
and printed copy of specifications and drawings of  
the patent as issued. [658]

SPECIMEN ENVELOPE CANNOT BE FUR-  
NISHED. [659]

Appeal No. 27,350. Paper No. 1.  
Reasons of Appeal.

\$10.—RECEIVED.

FEB. 28, 1906. S.

CHIEF CLERK, U. S. Patent Office.

U. S. PATENT OFFICE,

MAR. 2, 1906.

DIVISION XXXII.

To the Commissioner of Patents.

Sir: I hereby appeal to the examiners-in-chief  
from the decision of the principal examiner in the  
matter of my application for letters patent for an  
improvement in Envelopes, filed January 17, 1905,  
serial number 241,459, which on the 25th day of May,  
1905, was rejected the second time.

The following is the point of the decision on which  
the appeal is taken:

For that, the examiner erred in rejecting the

claims of this application on the references and reasons of record.

Respectfully,

MAX M. COHN,

By T. W. FOWLER,

His Attorney.

Washington, D. C., Feby. 26/06. [660]

Appeal No. 27,350. Paper No. 2.

Examiner's Statement.

U. S. PATENT OFFICE.

MAR. 22, 1906.

MAILED.

Department of the Interior,

United States Patent Office,

Washington, D. C., March 22, 1906.

Before the Honorable The Examiners-in-Chief.

On Appeal.

In re Application Max. M. Cohn.

Serial No. 241,459.

Filed Jan. 17, 1905.

Envelope.

Attorney—T. W. Fowler, Washington, D. C.

#### EXAMINER'S STATEMENT.

The claims appealed are as follows:

1. An advertising device comprising an envelope having a window through which the addressee's name on an enclosure may show through, said window being in outline characteristic of some symbol of trade, a tinted or colored border surrounding and giving definition to said window and permanent advertising matter form-

ing no part of the address, appearing on said tinted border and related to and in juxtaposition with the outline of said window.

2. As an advertising device, an envelope having a generally opaque face except for a transparent window portion through which an addressee's name on an enclosure may show through, said window being in general outline characteristic of a symbol of trade, and permanent printed matter on the face of the envelope related to and in juxtaposition with the outline of the window and co-operating with said outline to indicate a particular brand of goods.

These claims each stand rejected on the British patent to Cohn and Shipp, No. 14,478, June 27, 1904.

Each of these claims also stand rejected on British patent to Busch, 11,876, June 1, 1896.

The mechanical structure of applicant's envelope may be stated briefly to be an envelop having a transparent portion or window in its front surrounded by an opaque border [661] formed by the application of coloring matter. This structure is clearly disclosed by the British patent to Cohn and Shipp. The limitations in the claims to the shape or contour of the transparent portion or window, and to the advertising or printed matter placed upon the colored border cannot add any patentability to the claim. After an envelope has been provided with a transparent window surrounded with an opaque colored border, it is within the province of any mechanic or artisan to charge the shape or contour of the transparent window to suit his own taste, without inven-

tion. The patent to Cohn and Shipp shows a variety of shapes for the window. The printed matter upon the envelop likewise can add no patentability to the structure. This doctrine is well settled in the following decisions: *Ex parte Lee*, 18, O. G., 624, and *Ex parte Mosler*, 118, O. G., 590.

Attention is called to the fact that applicant in his application oath swears that he has no foreign patents. Applicant's attorney in his argument states that the British patent to Cohn and Shipp is Cohn's patent. It would appear that, until applicant establishes such fact by proper oath, the said patent is a valid reference for the claims.

The British patent to Busch discloses an envelope having in its front portion a transparent window surrounded by an opaque border preferably made by printing with opaque coloring matter. This is applicant's exact structure aside from the particular shape or design of the window and the advertising design or the printed or advertising matter cannot add patentability to a structure otherwise old.

It is submitted that the claims are not patentable.

Very respectfully,

JAY F. BANCROFT,

Examiner Division 32. [662]



United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

Transcript of Record.  
(IN THREE VOLUMES)

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H. J. HEINZ COMPANY (a Corporation),

Appellant,

vs.

MAX M. COHN,

Appellee.

---

VOLUME III.  
(Pages 641 to 732, Inclusive.)

---

Upon Appeal from the United States District Court for the  
Northern District of California, Second Division.

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FILED

DEC 20 1912

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Appeal No. 27,350. Paper No. 5.  
Brief.

In the United States Patent Office.

Before the Examiners-in-Chief.

On Appeal.

In re Application Max. M. Cohn.

Envelope.

Filed Jany. 17, 1905.

No. 241,459.

EXAMINERS-IN-CHIEF,

APR. 5, 1906.

U. S. PATENT OFFICE.

The claims appealed are:

1. An advertising device, comprising an envelope having a window through which the addressee's name on an enclosure may show through, said window being in outline characteristic of some symbol of trade, a tinted or colored border surrounding and giving definition to said window and permanent advertising matter forming no part of the address, appearing on said tinted border and related to and in juxtaposition with the outline of said window.

2. As an advertising device, an envelope having a generally opaque face except for a transparent window portion through which an addressee's name on an enclosure may show through, said window being in general outline characteristic of a symbol of trade, and permanent printed matter on the face of the envelope related to and in juxtaposition with the outline of

the window and co-operating with said outline to indicate a particular brand of goods.

The subject matter of this appeal is directly related to applicant's companion appealed case serial number 231,886, in which case I have filed a brief pointing out in detail the several distinguishing points of difference between what is old in the art and what is claimed in these appealed applications.

The references are the same in this case as in the said companion case, and appealed claim 1 of the present case [663] includes all of the features of the claims appealed in case serial number 231,886.

I refer your honors to the brief in the said companion case for the novel points, and the "new results" which grow out of the addition to the window opening of a tinted or colored border surrounding the window and giving definition to the outline thereof, and the *reasons which* such a border is made necessary.

Applicant's British patent is cited as the principal reference for the claims of the present case, and it is urged by the examiner that the invention of said British patent is the same as the one set up in this present case and that a new oath reciting said British patent is necessary. The examiner is, however, clearly wrong in his holding, as a bare inspection of the patent will show.

This British patent to applicant and the British patent to Busch are dealt with in detail in the brief filed in the aforesaid companion appeal.

The present invention goes a step further than the invention of case serial number 231,886, in that



it covers a particular kind of envelope, namely, one which because of its characteristics has been extensively adopted for "advertising" purposes.

The mechanical structure of the envelope of this present case is like that of the aforesaid companion case, and if there is found to be patentable novelty in the said other case, there will be found the same novelty in the present case plus the novel advertising features. [664]

Applicant has conceived the very useful idea of giving to the transparent window an outline characteristic of a symbol of trade, and he associates with this specific symbol permanent advertising matter which forms no part of the address but is so related to and in juxtaposition with the specific form of window as to instantly convey to the public a particular brand of goods, thus adapting the envelope as a novel and valuable advertising medium, in addition to its function as an enclosure for a letter.

To give the window any old shape and without any regard to the character of the permanent printed matter, or to employ printed matter which is not related to or fails to explain the form of the window would serve no useful purpose, therefore the invention is in the COMBINATION in the envelope of a window which by itself means substantially nothing of value as an advertising feature but which when viewed in connection with permanent printed matter, related to and in juxtaposition with the window, explains the symbol of trade which the window is designed to describe.

As a good example of this, take a window in the

form of an elongated oval. Such a window would have little, if any, meaning to the public; but print adjacent to such a window the word “perfecto” or “cremo” or “La Gato” or the name of some other well known brand of cigars, and how soon a smoker of such brand would associate in his mind the otherwise meaningless symbol and otherwise more or less meaningless word.

Thus the novelty of this case lies in the addition to the novel features of the companion case, of the window “in outline characteristic of some symbol of trade” and “permanent printed matter on the face of the envelope related to and in juxtaposition [665] with the outline of the window and co-operating with said outline to indicate a particular brand of goods” these qualities and this structure making the new and useful “advertising device” claimed.

It must be remembered that the permanent printed matter does not obscure or interfere with the window and the address to show therethrough, nor will it interfere or necessarily be related to a name card on the envelope.

Neither of the references cited, namely, applicant’s British patent or the British patent to Busch, shows (1) an advertising symbol of any character, which enables the window to have a double function, or (2) any printed matter “related to and in juxtaposition with” the window outline “to indicate (therewith) a particular brand of goods” and for this reason we submit that there is an invention involved and that the examiner is in error in refusing the claims as not

patentable over the art cited.

Respectfully submitted,

MAX M. COHN,

By T. W. FOWLER,

His Attorney. [666]

Recorded Vol. 78, p. 368.

Appeal No. 27,350.

Appeal No. 27,350. Paper No. 6.

Decision.

U. S. Patent Office, April 13, 1906.

Before the Examiners-in-Chief, on Appeal.

Application of Max M. Cohn for a patent for an improvement in *Envelopes*, filed January 17, 1905. Serial No. 241,4. Messrs. T. W. Fowler and Geo. H. Strong for appellant.

The claims appealed are:

“1. An advertising device comprising an envelope having a window through which the addressee's name on an enclosure may show through, said window being in outline characteristic of some symbol of trade, a tinted or colored border surrounding and giving definition to said window and permanent advertising matter forming no part of the address, appearing on said tinted border and related to and in juxtaposition with the outline of said window.

2. As an advertising device, an envelop having a generally opaque face except for a transparent window portion through which an addressee's name on an enclosure may show through, said window being in general outline character-

istic of a symbol of trade, and permanent printed matter on the face of the envelop related to and in juxtaposition with the outline of the window and co-operating with said outline to indicate a particular brand of goods."

The references are

British—Cohn & Shipp, No. 14,478, June 27, 1904;

Busch, No. 11,876, June 1, 1896.

'Of these two patents British No. 14,478 is the more pertinent. That patent describes an envelope having a window through which the addressee's name on an enclosure may show, said window being "oval, rectangular, diamond shaped, or fancifully bordered" in outline and having a tinted or colored border surrounding and giving distinction to said window, or, as the specification of the patent puts it (p. 2, lines 10, 11), "the finished envelope gives the effect of a transparent light colored area of an opaque, darker colored background." The patent also suggests having transparent letters as in figure 5 and lettering "Boots and Shoes," thus referring to the business of the sender. [667]

The applicant in the case before us has carried the idea of this patent a little further by making the fanciful shaped opening in the shape of a pickle, cigar or other symbol of trade and instead of merely referring to the business has used some other advertising matter associated with the articles whose form has been given to the window or opening. This idea appears to us to be inventive in character and the claims may accordingly be allowed.



The decision of the examiner is reversed.

J. H. BRICKENSTEIN,

T. G. STEWARD,

JOHN M. COIT,

Examiners-in-Chief. [668]

**[Notice of Taking of Depositions and Testimony.]**

*In the Circuit Court of the United States for the  
Northern District of California, Ninth Circuit.*

IN EQUITY—No. 15,204.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY,

Defendant.

To the Above-named Complainant and to Charles E.  
Townsend, Solicitor for Complainant:

You are hereby notified that on Thursday, December 1st, 1910, commencing at the hour of ten (10) o'clock A. M., or as soon thereafter on said day as practicable, before Frances M. Frost, Notary Public, or in case said Notary cannot act, then before some other Notary Public or officer authorized to administer oaths and take depositions, we shall, at our offices, Suite 1632 Marquette Building, No. 204 Dearborn Street, Chicago, Illinois, proceed with the taking of depositions and testimony on behalf of the above named defendant, to be used on final hearing. The witnesses that we expect to call and examine are; E. R. Le Gros, residing at 5943 W. Ohio Street, Chicago, Ill.; Julius Regenstein, residing at 5523 Kenmore Avenue, Chicago, Ill.; Ernest W. Sauer-

man, residing at 2038 N. 42nd Avenue, Chicago, Ill.; R. G. L. Olson, residing at 3617 Wrightwood Avenue, Chicago, Ill.; Max Lau, residing at 6333 Kenmore Avenue, Chicago, Ill.; A. R. Carqueville, residing at 576 Hazel Avenue, Chicago, Ill.; Alexander Sherwood, residing at 465 E. 30th Street, Chicago, Ill.; Adolph Schmidt, residing at 335 Dearborn Street, Chicago, Ill.; A. O. Johnson, residing at 134 Washington Street, Chicago, Ill.; Oscar W. Bond, residing at 6325 Monroe Avenue, Chicago, Ill.; and other witnesses.

The above depositions are to be taken under the 67th and 68th Rules in Equity as amended, and orally by questions and answers. [669]

The taking of depositions will be continued from day to day until the same are completed. You are invited to attend and cross-examine.

BANNING & BANNING,  
Solicitors for Defendant.

WM. A. SULLIVAN,

Resident Solicitor for Defendant.

Copy of the above notice received this 14th day of November, 1910.

CHARLES E. TOWNSEND,  
Solicitor for Complainant.

[Endorsed]: Published and Filed Jun. 2, 1911.  
Southard Hoffman, Clerk. By J. A. Schaertzer,  
Deputy Clerk. [670]

**[File-Wrapper, etc., In Re Abandoned Application  
of George Reese.]**

2-390.

**UNITED STATES OF AMERICA,  
DEPARTMENT OF THE INTERIOR,  
UNITED STATES PATENT OFFICE.**

To all to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the Records of this Office of the File Wrapper, Contents, and Drawing in the matter of the Abandoned Application of George Reese,

Filed January 15, 1904,      Serial Number 189,191,  
for

Improvement in Envelopes and Blanks Therefor.

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington, this 25th day of October, in the year of our Lord one thousand nine hundred and ten and of the Independence of the United States of America the one hundred and thirty-fifth.

[Seal]

EDWARD B. MOORE,  
Commissioner of Patents. [671]

2-437.

ABANDONED.

NUMBER (SERIES OF 1900). 1904.

DIV. 32.

PATENT No. 189,191. (EX'R'S BOOK). 101/70.

Name—George Reese.

Assor 1/2 to Julius Regenstein, of Chicago, Ill.

Of Chicago,

County of

State of Illinois.

Invention—Envelopes and Blanks Therefor

ORIGINAL.

RENEWED.

|                               |   |                             |                  |            |
|-------------------------------|---|-----------------------------|------------------|------------|
| Part 8 of Application Filed.  | { | Petition                    | Jan. 15, 1904    | , 190      |
|                               |   | Affidavit                   | “ “ 1904         | , 190      |
|                               |   | Specification               | “ “ 1904         | , 190      |
|                               |   | Drawing                     | “ “ 1904         | , 190      |
|                               |   | Model or Specimen           |                  | , 190      |
|                               |   | First Fee Cash \$15.        | Jan. 15, 1904    | , 190      |
|                               |   | “ “ Cert.                   |                  | , 190      |
|                               |   | Appl. filed complete        | Jan. 15, 1904    | , 190      |
|                               |   | Examined                    |                  | , 190      |
|                               |   | Countersigned               |                  |            |
| Division of App., Filed , 190 | { | For Commissioner            | For Commissioner |            |
|                               |   | Notice of Allowance         | , 190            | , 190      |
|                               |   | Final Fee Cash              | , 190            | , 190      |
|                               |   | “ “ Cert.                   | , 190            | , 190      |
|                               |   | Patented                    |                  | , 190      |
|                               |   | Associate Attorney—         |                  |            |
|                               |   | Attorney Banning & Banning, |                  |            |
|                               |   | Marquette Building,         |                  |            |
|                               |   | Chicago, Ill.               |                  |            |
|                               |   | Name                        |                  | Serial No. |
| Patent No. 189-191.           |   | Date of Patent. [672]       |                  |            |



Serial No. 189,191. Paper No. 1/2.

Application.

Filed Jan. 15—1904.

\$15—RECEIVED.

Ck. Jan. 15, 1904. z.

CHIEF CLERK U. S. PATENT OFFICE.

Registration No. 4226.

PETITION.

To the Commissioner of Patents.

Your petitioner George Reese, whose Post Office address is No. 135 Adams Street, Chicago, a citizen of the United States residing at Chicago in the County of Cook and State of Illinois prays that Letters Patent may be granted to him for the Improvement in the Envelopes and Blanks Therefor, set forth in the annexed specification.

And he hereby appoints Messrs. Banning & Banning (composed of Ephraim Banning, Thomas A. Banning and Samuel W. Banning), of Marquette Building, Chicago, Illinois, his attorneys, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein to receive the Patent, and to transact all business in the Patent Office connected therewith.

Signed at Chicago in the County of Cook and State of Illinois, this 2nd day of January, 1904.

GEORGE REESE.

OATH.

State of Illinois,

County of Cook,—ss.

George Reese, the above-named petitioner, being duly sworn, deposes and says that he is a citizen of

the United States and resident of Chicago, Cook County, Illinois, and that he verily believes himself to be the original, first, and sole inventor of the Improvement in Envelopes and Blanks Therefor, described [673] and claimed in the annexed specification; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof; or patented or described in any printed publication in the United States of America or any foreign country before his invention or discovery thereof or more than two years prior to this application; or in public use or on sale in the United States for more than two years prior to this application, and that no application for foreign patent has been filed by him or his legal representatives or assigns in any foreign country, ~~except~~ as follows:

GEORGE REESE.

Sworn to and subscribed before me, this second day of January, A. D. 1904.

[Notarial Seal]

OSCAR W. BOND,

Notary Public. [674]

TO ALL WHOM IT MAY CONCERN:

Be it known that I, George Reese, a citizen of the United States, residing at Chicago, in the County of Cook and State of Illinois, have invented certain new and useful Improvements in Envelopes and Blanks Therefor, of which the following is a specification:

The object of this invention is to produce an envelope having proper means provided in the formation thereof for displaying an address written upon the

letter, card, or other article inclosed, so that the address will be legible therethrough without the necessity for providing an additional address upon the exterior of the envelope. The invention consists in so forming the envelope that there will be no necessity for cutting or perforating the blank or material from which it is made, which cutting or perforating would of course tend to impair the blank, increase the cost of manufacture of the envelope and waste the portions cut therefrom.

In the drawings illustrating the invention Figure 1 is a plan view of the blank; Fig. 2 a front view of the completed envelope, having therein an addressed letter; and Fig. 3 a reverse view of the folded envelope.

As shown, the envelope is formed from a blank A of any usual and well known shape and size and said blank consists of a body portion B having attached thereto side wings C, a lower flap D and an upper flap E, although the envelope may be formed in any other suitable manner [675] and of other suitable size and shape. The body and flaps of the envelope, as shown, are formed of opaque paper of any suitable composition, and within the opaque body of the envelope is located a transparent portion F which is formed integral with the substance of the rest of the blank, and said transparent space may be formed either by making the portions of the envelope constituting the transparent space of less thickness than the rest of the blank or by applying an opaqueing substance such as ink, paint, or similar material to the rest of the blank, or by applying a substance, such as oil, to

the space desired to be rendered transparent. It is preferred, however, to employ the first method and to make the transparent portion of less density or thickness. By making the blank in this manner the completed envelope will be much stronger and more durable than an envelope from which a portion has been cut away, or than an envelope having a transparent paper pasted over an aperture therein. A further advantage will be found from the fact that no raised edges are left around the transparent portion since the entire blank is formed of a single sheet of paper, and the transparent portion is integral with the remainder. A further advantage in this mode of making the blank lies in the fact that the transparent portion can be formed in the making of the paper in a roll, so that a series of blanks can be cut from a single roll each blank having suitably positioned, a transparent [676] portion. In this way the operation of forming the blank will be greatly simplified and the cost of making the envelope lessened very materially.

After the blank has been formed, as above described, either by opaqueing the body and flaps, or by making a portion transparent by making it of less density than the remainder, or otherwise the envelope is completed by turning in the side wings and lower flap in the usual manner, leaving the upper flap to be sealed when desired. The letter G, or other article to be inserted, is then inscribed with the desired address H in such position that when folded and inserted the address will be located immediately behind the transparent portion of the envelope, thereby displaying



the address therethrough. The opaque body serves to conceal all other portions of the letter, making it impossible for any one to read the contents thereof and allowing the address only to be seen. [677]

What I regard as new and desire to secure by Letters Patent:

1. As a new article of manufacture, an envelope blank formed of comparatively opaque material, having located therein a transparent portion formed integral with the opaque portion, said transparent portion being located in a position that will permit a blank to be folded into an envelope with the transparent portion occupying the address space of the envelope, substantially as described.

2. As a new article of manufacture, an envelope blank formed of comparatively opaque material, having a transparent portion of less density than the remainder of the blank and formed integral with the opaque material, said transparent portion being located in a position that will permit the blank to be folded into an envelope with the transparent portion occupying the address space of the envelope, substantially as described.

3. As a new article of manufacture, an envelope blank having a transparent portion formed integral with the remainder of the blank and having the remaining portion of the blank covered with suitable opaqueing substance, said transparent portion being located in a position that will permit the blank to be folded into an envelope with the transparent portion occupying the address space of the envelope, substantially as described.

4. As a new article of manufacture, an envelope [678] of comparatively opaque material having a transparent portion formed integral with the opaque material, said transparent portion being located in a position to occupy the address space of the envelope, substantially as described.

6. As a new article of manufacture, an envelope of comparatively opaque material having a transparent portion formed therein integral with and of less density than the opaque material, said transparent portion being located in a position to occupy the address space of the envelope, substantially as described.

7. As a new article of manufacture, an envelope having in its body a transparent portion occupying the address space of the envelope and having the remainder of the envelope covered with a suitable opaqueing substance, substantially as described.

GEORGE REESE.

Witnesses:

WILLIAM P. BOND.

WALKER BANNING.

[Endorsed]: U. S. Patent Office, Jan. 18, 1904.  
Division XXXII. Application of George Reese.  
Improvement in Envelope and Blanks Therefor.  
[679]

2-260.

FEF.

Division 32, Room 148.

Address Only The Commissioner of Patents, Washington, D. C.

Paper No. ———1.

All communications respecting this application should give the serial number, date of filing and title of invention.

Department of the Interior,  
United States Patent Office,  
Washington, D. C., Feb. 11, 1904.

George Reese, U. S. PATENT OFFICE,  
C/o Banning & Banning,  
Chicago, Ill.

MAILED

FEB. 11, 1904.

Please find below a communication from the EXAMINER in charge of application No. 189,191, filed Jan. 15, 1904, "Envelopes and Blanks Therefor."

F. I. ALLEN.

Serial No. 189,191. Paper No. 1.

Rejection E. B. MOORE,  
DIV. 32. Commissioner of Patents.

The claims presented are rejected as being substantially anticipated in British patent to Busch, 11,876, July 4, 1896 (229-71) or either of the United States patent to Callahan, 701,839, June 10, 1902 (Same class) and Brown, 36393, Sep. 9, 1862 (Same class).

JAY F. BANCROFT,

R. C. F.

Examiner. [680]

1904.

## CONTENTS:

Print

 $\frac{1}{2}$ . Application—papers.

1. Rej. Feb. 11-04.

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## TITLE:

Improvement in

M. C. W.

M. A. J.

[Endorsed]: 163253/10. U. S. Patent Office.

Copy Made Oct. 25, 1910. [681]



United States Circuit Court, Northern District of California. In Equity—No. 15,204. Max M. Cohn vs. H. J. Heinz Co. Complainant's Exhibit "H" for Identification. [Seal] Francis M. Frost, Notary Public.

No. 15,204. In U. S. Circuit Court, Northern District of California. Cohn vs. H. J. Heinz Co. Compl. Exhibit "H." H. M. WRIGHT, Examiner.

Published and filed Jan. 2, 1911. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk. [682]

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[Complainant's Exhibit "J."]

2-390.

UNITED STATES OF AMERICA,  
DEPARTMENT OF THE INTERIOR,  
UNITED STATES PATENT OFFICE.

To all to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the Records of this Office of the Brief for Appellant, filed July 17, 1906; and Decision of the Acting Commissioner, dated August 1, 1906; on Appeal to the Commissioner, filed July 6, 1906, in the matter of the

Application of

Max M. Cohn,

Filed November 8, 1904, Serial Number 231,886,  
for

Improvement in Envelopes.

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington, this 27th day

of December, in the year of our Lord one thousand nine hundred and ten and of the Independence of the United States of America the one hundred and thirty-fifth.

F. A. TENNANT,

Assistant Commissioner of Patents. [683]

Docket Clerk.

Jul. 17, 1906.

U. S. Patent Office.

In the United States Patent Office.

Before the Commissioner of Patents.

In re Application of Max M. Cohn.

Envelopes.

Filed Nov. 8, 1904.

Serial No. 231,886.

#### ON APPEAL.

#### BRIEF ON BEHALF OF APPELLANT.

This is an appeal from the decision of the examiners-in-chief affirming the rejection of the following claims:

1. As a new article of manufacture, an envelope with an unpunctured face of RELATIVELY OPAQUE STOCK, said ENVELOPE FACE having a transparent window and a CONTRASTING BORDER AROUND SAID WINDOW to give definition to the window opening.

2. As a new article of manufacture, an envelope with an unpunctured face of relatively opaque stock, said envelope face having a portion to which a preparation has been applied to

render such portion transparent, and a colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock.

In the brief filed with the examiners-in-chief this appellant set forth at length the differences between his envelope and the envelopes of the patents cited; and as it seems unnecessary to again point out these distinctions in detail, I will ask your Honor to consider that brief in disposing of the present appeal.

In the decision appealed from there appears certain errors which may have been responsible for the examiners-in-chief holding that this invention was anticipated by the prior art, such errors including their holding that the protective border [684] which is such an important feature of the claims, is a mere matter *or* ornamentation; and that the Brown patent contains any description which if followed would produce appellant's envelope.

In view of statements appearing in said decision bearing upon these phases of this case, it is not unreasonable for appellant to think that his invention and the full force and effect thereof were not as familiar to the examiners-in-chief at the time the opinion was handed down as appellant should have desired.

There are two vital points only to which we will call attention in this brief, as we shall depend on the brief filed below for the other points of difference.

Each claim appealed contains the reference to an

envelope with an unpunctured face of **RELATIVELY OPAQUE STOCK**.

It is necessary in the first place to fix in your Honor's mind just what the expression "relatively opaque stock" means, for an apparent misinterpretation of these words has, we believe, been largely responsible for the adverse decision of the examiners-in-chief.

For instance, the examiners-in-chief say,—

"The appellant **STARTS WITH AN OPAQUE MATERIAL**"

but this is a manifest error because our specification says,—

"In carrying out my invention I take a blank sheet of paper or an envelope blank of suitable strength and texture which is, say, **SEMI-TRANSPARENT**, and apply to a portion of **ONE** side of the blank, generally on the **INSIDE**, a preparation which has the property of rendering transparent the portion to which it is applied." [685]

Our specification also says,—

"Usually and perhaps preferably the **PREPARATION** and **COLORING MATTER** are applied on **OPPOSITE** sides of the blank; the preparation on the inside and the coloring on the outside."

It is important to note that the coloring matter which is employed to render the semi-transparent piece opaque and the preparation for rendering transparent that portion of the already semi-trans-



parent field or window, are applied not to the same but to different sides of the sheet or piece.

The type of envelope to which this invention is particularly applicable is one having a relatively thin, tough stock or body, and nearly all such envelopes are printed on either the inside (see Exhibit A) or outside (Exhibit B) this printing being for the purpose of rendering opaque the normal "semi-transparent" sheet so that the writing on the enclosed sheet will not be visible from the outside. Now your Honor will understand that we do NOT start with an opaque material, as the examiners-in-chief say in their decision, but we start with a SEMI-TRANSPARENT material which we subsequently render opaque by printing but leaving unprinted that portion of the semi-transparent sheet which is to be reserved for the window and which unprinted reserved portion we are to render more transparent by the application thereto of some oily substance.

The examiners-in-chief are also in error when they say that "by treating a portion thereof" (referring to the opaque material) applicant "makes a transparent window therein at the point where the address is to appear," because we do not treat any portion of the PRINTED or OPAQUE material with oily matter and it would be unwise to do so as the lines of printing would appear distinctly through the part thus treated and made more transparent, and an unsightly envelope would result.

Now it is a fact that grease or oil applied to paper will spread more upon that surface of the sheet to

which it is [686] directly applied than upon the opposite surface. This probably is due to the capillary attraction and to the oil following more quickly the direct path offered by the fibres which lie upon the side nearest to that which the oil is applied; and if this side is an unprinted one or one to which a coloring matter has not been applied to make the paper opaque, the "creeping" effects of the oil will be more pronounced, as the printing ink itself would retard the same if on the same side as the grease, although it will not obliterate or almost entirely conceal the same, and the ragged line which would bound the transparent window would be unsightly and the window itself would not be sharply defined and have a neat finished appearance. It is for the purpose of obliterating and concealing the ragged outline of the window due to the "creeping" of the oil used to make the window transparent, and to give definition to the window, and not as a mere matter of ornamentation, as the examiners-in-chief suggest, that we employ a colored or printed border as a surrounding for the transparent window. Thus we obtain a new result, namely, we may make a transparent window in an unpunctured sheet of paper which is printed on one side to render the portion outside of the window opaque, and then we apply over the already printed surface a relatively heavy darker border to serve to obliterate the bad "creeping" effect of the oily matter used on the unprinted area of the printed sheet. When the colored preparation is used on one side of the sheet and the grease applied to the opposite side of the un-

printed area, as we describe, we reduce the "creeping" effect of the oil to a minimum, and obtain an envelope of commercial value, and the only envelope of this type which has proved commercially valuable. [687]

The reference of the examiners-in-chief to the Brown patent and their opinion that if the directions given in the patent are followed there would result an envelope like ours, is clearly erroneous because Brown only describes the common printing to render the sheet opaque, and he does not even suggest the advisability of using, or the need for, a separate border to obliterate and conceal certain bad effects due to rendering an unpunctured sheet transparent by oily matter.

Brown describes two types of envelopes in one of which the sheet is punctured to form a window opening, and over this opening he pastes a previously oiled and separate piece, the objections to which are fully stated in our former brief.

The British patents cited, one of which is applicant's also do not disclose the salient features of this case, namely the novel and useful border applied about the window for the purpose before alluded to, and therefore are not pertinent references for the claims appealed.

There is certainly a patentable invention involved in this case and we think it fairly expressed in the claims appealed.

Respectfully submitted,

MAX M. COHN,

By T. W. FOWLER,

His Attorney. [688]

Recorded Vol. 85, page 459.

S. E. T.

Serial No. 231,886. Paper No. 3.

Commr's Decision.

July 18, 1906.

United States Patent Office.

Ex parte Max M. Cohn.

Envelopes.

Appeal from Examiners-in-chief.

Application filed November 8, 1904. No. 231,886.

Mr. George H. Strong and Mr. T. W. Fowler for appellant.

This is an appeal from the decision of the examiners-in-chief denying the patentability of the following claims:

"1. As a new article of manufacture, an envelope with an unpunctured face of relatively opaque stock, said envelop face having a transparent window and a contrasting border around said window to give definition to the window opening.

"2. As a new article of manufacture, an envelop with an unpunctured face of relatively opaque stock, said envelop face having a portion to which a preparation has been applied to render such portion transparent, and a colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock."

The references are:



Brown, September 9, 1862, No. 36393,

British patent to Cohn et al. No. 14,478, June 27, 1904.

British patent to Busch, No. 11,876, June 1, 1896.

The nature of the alleged invention is clearly set forth in the decision of the examiners-in-chief in the following language:

“The alleged invention relates to the class of envelopes in which the address is not written on the envelope itself but on a paper inside of the envelope and is read [689] through the transparent surface thereof. The appellant starts with an opaque material and by treating a portion thereof makes a transparent window therein at the point where the address is to appear. It is said that the preparation used in treating the material to make the transparent window cannot be applied in such a way as to make a clear cut and regular outline for the window but will creep and make an irregular and rough outline. To hide this rough outline and leave a transparent window of symmetrical and regular shape the appellant applies a colored border to the surface around the window.”

The specification of the patent to Brown states:

“The improvement is to make the envelope or wrapper transparent sufficiently to clearly show the cards of address through its face. There may be only a transparent portion B large enough to exhibit the ‘direction’ through it; and this may be made either by rendering a portion of the envelope or wrapper itself

transparent by the same means or substances as employed for making tracing paper or any other in the process of manufacturing the paper, or the envelope, leaving the remainder of the envelope opaque. Or a piece of the envelope of the proper size and shape, may be cut out of the envelope; and the aperture thus made covered with transparent paper or other equivalent transparent covering."

This case is believed to present invention. The essence thereof is found to lie in the application of a contrasting or colored border around a transparent opening whose edges are of irregular outline in such manner that the border obscures the irregular outline, defines the size of the opening, and makes the article a salable commodity.

The language of claim 1 does not indicate that the transparent opening in the envelope is of irregular outline, or that the border covers any portion of the transparent surface. This claim is not regarded as defining anything patentable over the patent to Brown.

Claim 2, however, defines the invention with sufficient clearness to render it allowable. This claim covers the envelope of opaque material, having a portion to which a preparation has been applied to render it transparent, the transparent portion being of irregular outline due to the spreading or creeping of the preparation used, and a border concealing the irregular outline of the transparent portion of window. While the final result is to enhance [690] the appearance by concealing the irregular outline,

the result is brought about by mechanical features, namely, the application of the printed border to a portion of the paper to which the oily preparation has been applied. The British patents are not regarded as anticipations as they require, so far as can be understood, that the envelope blank be made from a transparent sheet of paper, while appellant starts with an opaque sheet of paper.

The decision of the examiners-in-chief is affirmed as to claim 1 and reversed as to claim 2.

E. B. MOORE,

Acting Commissioner.

August 1, 1906.

[Endorsed]: No. 15,204. In U. S. Circuit Court, Northern District of California. Cohn vs. H. J. Heinz Co. Compl. Exhibit "J." H. M. Wright, Examiner.

Published and Filed Jun. 2, 1911. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk.  
[691]

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*District Court of the United States, Ninth Judicial  
Circuit, Northern District of California, Division 2.*

IN EQUITY—No. 15,204.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY,

Defendant.

**Petition for Appeal and Order of Allowance.**

And now comes the said defendant, the H. J. Heinz Company, by Banning & Banning, its solicitors, and considering itself to be aggrieved by the final order or decree entered herein on the 6th day of August, 1912, granting an injunction against the said defendant pursuant to the prayer of the bill of complaint herein, prays an appeal from the said order or decree to the United States Circuit Court of Appeals for the Ninth Circuit; that a transcript of the record and proceedings in this cause be transmitted to the said United States Circuit Court of Appeals; and that an order or decree be entered in and by the said Circuit Court of Appeals reversing and setting aside the said order or decree herein appealed from.

BANNING & BANNING,  
Solicitors for Defendant.

Appeal allowed.  
Aug. 7th, 1912.

WM. C. VAN FLEET,  
Judge. [692]

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*District Court of the United States, Ninth Judicial  
Circuit, Northern District of California, Division 2.*

IN EQUITY—No. 15,204.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY,

Defendant.



**Assignment of Errors.**

Now, to wit, this 7th day of August, 1912, comes the H. J. Heinz Company, the defendant in the above-entitled cause, by its solicitors, Banning & Banning, and files with its petition for appeal the following assignment of errors:

1. That the Court erred in finding and holding that Letters Patent of the United States, No. 835,850, issued November 13, 1906, to Max M. Cohn, for improvements in Envelopes, was good and valid in law and in sustaining the same.

2. That the Court erred in finding and holding that Letters Patent of the United States, No. 824,904, issued July 3, 1906, to Max M. Cohn, for improvements in Envelopes, was good and valid in law and in sustaining the same.

3. That the Court erred in holding that the envelopes used by the defendant herein were an infringement of said letters patent or either of them, and in ordering an injunction and accounting against the said defendant.

4. That the Court erred in holding that the said letters patent, No. 835,850 and No. 824,908, involved novelty and invention, notwithstanding the state of the art as established in the evidence herein.

5. That the Court erred in not holding that the said letters patent, No. 835,850 and No. 824,908, were invalid and of no force or effect whatever, as lacking novelty and invention, in view of the state of the art established in the evidence. [693]

6. That the Court erred in not holding that said

letters patent No. 835,850 were anticipated by the one-piece transparent window envelopes made by Julius Regenstein and others in January, 1904.

7. That the Court erred in holding that Max M. Cohn conceived of the invention described and claimed in said letters patent No. 835,850 prior to January, 1904, and before the making of the January, 1904 envelopes by Julius Regenstein and others.

8. That the Court erred in not finding and holding that the said letters patent No. 835,850 were invalid and void and of no force or effect whatever, in view of the common and universal practice in this country among the printers of three-color pictures, the printers of lithographic labels, and the printers of general kinds of work, of printing a border around their pictures or work to give definition to the same, and to cover up and conceal ragged, imperfect and unsightly edges resulting from the running of the ink or colors or from other causes.

9. That the Court erred in not finding and holding that said letters patent No. 835,850 were invalid and void and of no force or effect whatever, in view of the existence in the prior art of one-piece transparent window envelopes without a border around the transparent window, and of the common practice and expedient of printers, of printing a border around pictures and other kinds of work to cover up and conceal ragged, imperfect and unsightly edges resulting from any cause whatsoever.

10. That the Court erred in not finding and holding that said letters patent No. 835,850 were invalid and void and of no force or effect whatever, in view

of the Busch 1896 English patent No. 11,876, which had borders printed around the space left for the transparent window.

11. That the Court erred in not finding and holding that said letters patent No. 835,850 were invalid and void and of no force or effect whatever, in view of the use of borders around desired transparent spaces, produced in opaque paper by an oily preparation, as shown in the various letters patent offered in evidence on behalf of the defendant.

12. That the Court erred in not finding and holding that said letters patent No. 835,850 were invalid and of no force or effect whatever, on the ground that the printing of the border around the transparent window of the envelope described and claimed in such patent was a mere printer's mechanical expedient that had been practiced for many years in various kinds of printer's work to cover up and conceal ragged, imperfect and unsightly edges resulting from any cause whatsoever.

13. That the Court erred in not finding and holding that the envelope described and claimed in said letters patent [694] No. 835,850 was first conceived of by the said Max M. Cohn in the spring or summer of 1904, and after the Regenstein January, 1904 envelope had been manufactured.

14. That the Court erred in not finding and holding that the envelope described and claimed in said letters patent No. 824,908 was limited and confined to envelopes containing a transparent window or space which, considered by itself alone and irrespective of the border, was in outline characteristic of

some symbol of trade or article of manufacture.

15. That the Court erred in not finding and holding that said letters patent No. 824,908 were invalid and void and of no force or effect whatever, in view of the Boldt 1897 English patent No. 29,956, offered in evidence by the defendant.

16. That the Court erred in not finding and holding that the envelope described and claimed in said letters patent No. 824,908 involved only mere mechanical knowledge and skill to make, in view of the fact that envelopes with transparent windows in various forms and with borders around the same were shown and described in the Boldt English patent No. 29,956, the Busch English patent No. 11,876, and other patents offered in evidence by the defendant.

17. That the Court erred in not finding and holding that only mechanical knowledge and skill were required to take the envelope described and claimed in said letters patent No. 835,850, with its transparent window and border, and changing the form of the window so as to make it in outline characteristic of some symbol of trade, in view of the Boldt 1897 English patent, and of the practice from time immemorial of printing permanent advertising matter on the face of the envelope outside of the space reserved for the address.

18. That the Court erred in finding and holding that the transparent window in the defendant's envelopes charged to infringe was in outline characteristic of some symbol of trade or article of manufacture, as described and claimed in said letters patent No. 824,908, and in finding and holding that the de-



fendant's envelopes were an infringement of the claims of said letters patent No. 824,908.

WHEREFORE the defendant, the H. J. Heinz Company, prays the United States Circuit Court of Appeals for the Ninth Circuit to reverse the aforesaid decree of the District Court of the United States for the Northern District of California, and to remand this cause with directions to said District Court to enter a decree in favor of the defendant and to dismiss the bill of complaint herein for want of equity.

BANNING & BANNING,  
Solicitors for Defendant.

[Endorsed]: Filed Aug. 7, 1912. Jas. P. Brown,  
Clerk. By W. B. Maling, Deputy Clerk. [695]

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*District Court of the United States, Ninth Judicial  
Circuit, Northern District of California, Division 2.*

IN EQUITY—No. 15,204.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY,

Defendant.

**Cost Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:

That the H. J. Heinz Company, a corporation, as principal, and United States Fidelity & Guaranty Co., as surety, are jointly, severally, and firmly

bound unto Max M. Cohn, the above-named complainant, in the full and just sum of one thousand (1000) dollars, to be paid to the said Max M. Cohn, his attorneys, heirs or assigns, to which payment well and truly to be made we bind ourselves, our successors or assigns, jointly and severally by these presents.

Sealed with our seals and dated this 7th day of August, 1912.

WHEREAS, at a hearing in the District Court of the United States, for the Northern District of California, in a suit pending in said court, being the said Max M. Cohn, complainant, and the said H. J. Heinz Company, defendant, a decree was entered on the 6th day of August, 1912, against the said defendant, finding infringement of the Cohn patents, No. 835,850 and No. 824,908, and assessing costs against the defendant; and the said H. J. Heinz Company having obtained an order allowing an appeal to the United States Circuit Court of Appeals:

NOW THE CONDITION of the above obligation is such that if the said H. J. Heinz Company shall prosecute its appeal to effect and answer damages and costs if it fail to make the appeal good, then the above obligation to be void; otherwise to remain in full force and effect.

H. J. HEINZ COMPANY,

By N. J. MITCHELL.

UNITED STATES FIDELITY & GUAR-  
ANTY CO.

By W. S. ALEXANDER,

Attorney in Fact.

By JESSE M. WHITED,

Attorney in Fact.

[Endorsed]: Approved this 7th August, 1912.

WM. C. VAN FLEET,

Judge.

Filed Aug. 7th, 1912. Jas. P. Brown, Clerk. By  
W. B. Maling, Deputy Clerk. [696]

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*In the District Court of the United States, in and for  
the Northern District of California, Second Di-  
vision.*

No. 15,204.

MAX M. COHN,

Complainant,

vs.

M. J. HEINZ CO.,

Defendant.

**Order Allowing Withdrawal of Original Exhibits.**

Good cause appearing therefor, it is ordered that Complainant's Exhibits "A," "B," "C," "C1," "C2," "D," "E," "F," "G," "I," "K," "L," "M," "N," "O," "P," "Q," "R," "S," "T" (10 Envelopes), "U," "V," "W," "X," "Y," "Z," "AA," "BB," "CC," "DD," "EE," "FF," "GG," "HH," and Defendant's Exhibits "Defendant's Exhibit January, 1904, Envelope No. 1," "Defendant's Exhibit Osborne Art Calendar for 1900," U. S. Letters Patent No. 835,850; No. 824,908; No. 36,393; No. 8,514 Re-issue; No. 369,059; No. 752,537; No. 766,902; No. 701,839; British Letters Patent No. 1119; No. 5823; No. 746; No. 2339; No. 21,711; No. 7955; No. 11,876; No. 29,956; No. 25,532; No. 14,478; File

Wrapper "Abandoned Application of Max M. Cohn, Serial Number 207,082; File Wrapper of Letters Patent of J. S. Brown; File Wrapper and Contents of Appeal of Application of Max M. Cohn; Defendant's Exhibit Transo Company's Stock Envelope; Defendant's Exhibit January, 1904, Envelope No. 1; Defendant's Exhibit January, 1904, Envelope, No. 2; Defendant's Exhibit Illustration of Printer's Border; Defendant's Exhibit Printed Sheet; Defendant's Exhibit Cohn Warning; Defendant's Exhibit Palm Brothers Letter; Defendant's Exhibit Illustration of Lithographic Work; Defendant's Exhibit Goyette Envelope; Defendant's Exhibit Moline Envelope; Defendant's Exhibit Busch 1896 Envelope No. 1; Defendant's Exhibit Busch 1896 Envelope, No. 2; Defendant's Exhibit Busch 1896 Envelope, No. 3; Defendant's Exhibit Busch Envelope Transparent [697] Stock; being exhibits of material, be and hereby are allowed to be withdrawn from the files of this Court in this cause and transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, as a part of the record on appeal; said original exhibits to be returned to the files of this Court upon the determination of said appeal by said Circuit Court of Appeals.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Oct. 26, 1912. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [698]



*In the District Court of the United States, in and for  
the Northern District of California, Second Di-  
vision.*

No. 15,204.

MAX M. COHN,

Complainant,

vs.

H. J. HEINZ COMPANY (a Corporation),

Defendant.

**Certificate of Clerk U. S. District Court to Record  
on Appeal.**

I, W. B. Maling, Clerk of the District Court of the United States of America, in and for the Northern District of California, do hereby certify that the foregoing six hundred and ninety-eight (698) pages, numbered from 1 to 698, inclusive, to be a full, true and correct copy of the record and proceedings in the above-entitled cause, excepting therefrom the following original exhibits, viz.: Complainant's Exhibits "A," "B," "C," "C1," "C2," "D," "E," "F," "G," "I," "K," "L," "M," "N," "O," "P," "Q," "R," "S," "T," (10 Envelopes), "U," "V," "W," "X," "Y," "Z," "AA," "BB," "CC," "DD," "EE," "FF," "GG," "HH," and Defendant's Exhibits, "Defendant's Exhibit January, 1904, Envelope No. 1," "Defendant's Exhibit Osborne Art Calendar for 1900," U. S. Letters Patent No. 835,850; No. 824,908; No. 36,393; No. 8,514, Re-issue; No. 369,059; No. 752,537; No. 766,902; No. 701,839; British Letters Patent No. 1119; No. 5823; No. 746; No. 2339; No. 31,711; No. 7955; No. 11,876; No.

29,956; No. 25,532; File Wrapper "Abandoned Application of Max M. Cohn, Serial Number 207,082"; File Wrapper of Letters Patent of J. S. Brown; File Wrapper and Contents of Appeal of Application of Max M. Cohn; Defendant's Exhibit Transo Company's Stock Envelope; Defendant's Exhibit January, 1904, Envelope No. 1; Defendant's Exhibit January, 1904, Envelope, No. 2; Defendant's Exhibit Illustration of Printer's Border; Defendant's Exhibit Printed Sheet; Defendant's Exhibit Cohn Warning; Defendant's Exhibit Palm Brothers Letter; Defendant's Exhibit Illustration of Lithographic Work; Defendant's Exhibit Goyette Envelope; Defendant's Exhibit Moline Envelope; Defendant's Exhibit Busch 1896 Envelope No. 1; Defendant's Exhibit Busch 1896 Envelope No. 2; Defendant's Exhibit Busch 1896 Envelope No. 3; Defendant's Exhibit Busch Envelope Transparent Stock; (which by order of Court are withdrawn and transmitted herewith as a part of this record), and that the same constitutes the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing Transcript of Record on Appeal is \$329.20; that said amount was paid by Messrs. Banning & Banning, solicitors for defendant, and that the original Citation issued in said cause is hereto annexed. [699]

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District

Court, this 29th day of October, A. D. 1912.

[Seal]

W. B. MALING,  
Clerk of the District Court of the United States,  
Northern District of California.

By J. A. Schaertzer,  
Deputy Clerk. [699a]

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[Citation (Original).]

UNITED STATES OF AMERICA—ss.

The President of the United States, to Max M. Cohn,  
Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, on the 4th day of September, being within thirty days from the date hereof, pursuant to an order allowing an appeal in the Clerk's office of the Circuit Court of the United States, for the Northern District of California, wherein a final decree was entered against H. J. Heinz Co., in conformity with the prayer contained in the bill of complaint in a certain suit in equity No. 15,204, said decree being entered on August 6, 1912, and you are cited to show cause, if any there be, why the decree rendered against the said H. J. Heinz Co., as in the said suit No. 15,204 mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the North-

ern District of California, this 7th day of August,  
A. D. 1912.

WM. C. VAN FLEET,  
United States District Judge.

Service of within Citation, by copy, admitted this  
7th day of August, A. D. 1912.

CHAS. E. TOWNSEND,  
Attorney for Complainant.

[Endorsed]: No. 15,204. In the Circuit Court of  
the United States for the Ninth Circuit, Northern  
District of California, Division 8. Max M. Cohn vs.  
H. J. Heinz Co. Citation. Filed August 7th, 1912.  
Jas. P. Brown, Clerk. By W. B. Maling, Deputy  
Clerk. [700]

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[Endorsed]: No. 2195. United States Circuit  
Court of Appeals for the Ninth Circuit. Max M.  
Cohn, Appellant, vs. H. J. Heinz Company, a Cor-  
poration, Appellee. Transcript of Record. Upon  
Appeal from the United States District Court for the  
Northern District of California, Second Division.

Filed October 29, 1912.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.



*In the United States Circuit Court of Appeals, Ninth  
Circuit.*

No. —.

H. J. HEINZ COMPANY,

Plaintiff in Error,

vs.

MAX M. COHN,

Defendant in Error.

**Order Extending Time to October 2, 1912, to File  
Record Thereof and Docket Cause.**

Good cause appearing therefor, it is ordered that the plaintiff in error in the above-entitled cause may have to and including October 2, 1912, within which to file its record on appeal and to docket the suit in the United States Circuit Court of Appeals for the Ninth Circuit.

Dated, September 4, 1912.

WM. C. VAN FLEET,

United States District Judge, Northern District of  
California.

[Endorsed]: Filed Sep. 4, 1912. F. D. Monckton,  
Clerk.

*In the United States Circuit Court of Appeals, Ninth  
Circuit.*

No. —.

H. J. HEINZ COMPANY, a Corporation,  
Appellant,

vs.

MAX M. COHN,  
Appellee.

**Order Extending Time to November 1, 1912, to File  
Record Thereof and Docket Cause.**

Good cause appearing therefor, it is ordered that the appellant in the above-entitled cause may have to and including November 1, 1912, within which to file its record on appeal and to docket the suit in the United States Circuit Court of Appeals for the Ninth Circuit.

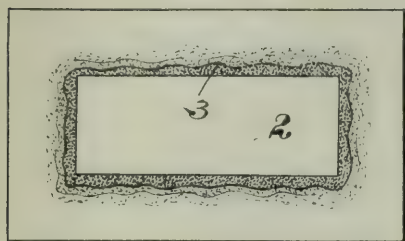
Dated, October 2, 1912.

WM. C. VAN FLEET,  
United States District Judge, Northern District of  
California.

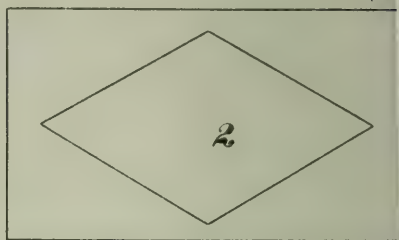
[Endorsed]: No. —. United States Circuit Court of Appeals for the Ninth Circuit. Filed Oct. 2, 1912. F. D. Monckton, Clerk.

No. 2195. United States Circuit Court of Appeals for the Ninth Circuit. Orders Under Rule 16 Enlarging Time to Nov. 1, 1912, to File Record Thereof and to Docket Case. Refiled Oct. 29, 1912. F. D. Monckton, Clerk.

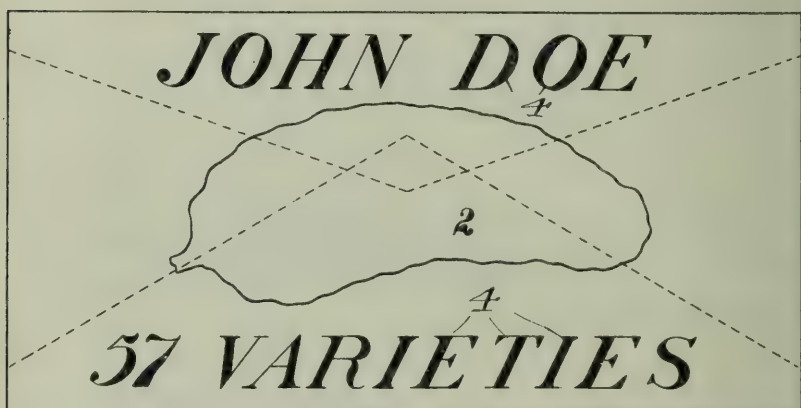
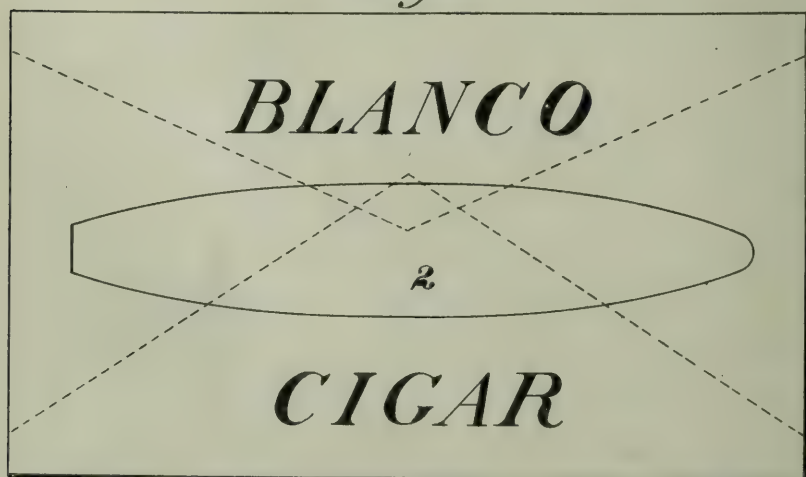
[Drawings and Specification of Letters Patent No.  
835,850, Patented November 13, 1906, Issued to  
**Max M. Cohn.**]

*Fig. 1.*

A

*Fig. 2.*

A

*Fig. 3.**Fig. 4.*

Witnesses:

F. C. Fiedner  
J. A. Annse

Inventor

May M. Cohn  
By Geo. H. Strong



MAX M. COHN, OF SAN FRANCISCO, CALIFORNIA.

687

## ENVELOP.

No. 835,850.

Specification of Letters Patent.

Patented Nov. 13, 1906.

Application filed November 8, 1904. Serial No. 231,886.

*to all whom it may concern:*

Be it known that I, MAX M. COHN, a citizen of the United States, residing in the city and county of San Francisco, and State of California, have invented new and useful Improvements in Envelops, of which the following is a specification.

My invention relates to an improved envelop of the type having a generally opaque surface with a more or less limited transparent area for the addressee's name and address to show through.

The object of my invention is to provide an unpunctured envelop of this character which shall be simple and cheap to manufacture, practical in every way, and which shall offer novel and unique possibilities for advertising.

The invention consists of the parts and the construction and combination of parts, as hereinafter more fully described and claimed, having reference to the accompanying drawings, in which—

Figure 1 shows an envelop embodying my invention, in which I employ a tinted or colored border around the window-opening to cover up signs of "creeping" or "bleeding" of the preparation into the surrounding body of the paper. Fig. 2 represents an envelop with a different-shaped opening from that of Fig. 1 and in which the entire face of the envelop around the window is assumed to have been imprinted or colored to give definition to the window-opening and obliterate signs of "creep" in the transparency-producing preparation. Figs. 3 and 4 show modifications of the invention applied to advertising purposes.

In carrying out my invention I take a blank sheet of paper or an envelop-blank of suitable strength and texture which is, say,

ency or window of the desired design, and it is applied to such part of the blank where the transparency is desired to appear on the face of the envelop, and it may cover a larger or a lesser space, according to the desired size of the transparency or window.

Since the oily preparation has a tendency to creep or "bleed" beyond the borders of the space imprinted by the stamp or die by which it is applied, and so possibly stain or discolor the rest of the envelop or give a ragged appearance to the window-opening, it is preferred, even where the paper might ordinarily be deemed sufficiently opaque, to apply some sort of coloring-matter at least around the immediate borders of the transparency. This coloring-matter may be applied solid over the face of the envelop around the window, as in Fig. 2, or it may take the form of graduated tints or of being shaded, or the representation of a surrounding cloud effect, as indicated at 3 in Fig. 1. In any event the effect and object of the colored border is to give definition to the window-opening and obliterate or cover up the otherwise rough unfinished outline of the window resulting from the encroachments of the oil or grease or other substance beyond its desired limits.

Usually, and perhaps preferably, the preparation and coloring-matter are applied on opposite sides of the blank, the preparation on the inside and the coloring on the outside.

Developing out of this idea of making an unpunctured envelop with a window or transparency for the addressee's name to appear through is the idea of changing the form or outline of this transparency to correspond with the trade-mark, design, or advertised object of a merchant, manufacturer, advertiser, or other person, company, or firm.

In Figs. 3, 4 are shown possible modifications of this idea adapted to advertising purposes.

might use an envelop with a window in the shape of an oyster, a fish, a cake of soap, and other toilet articles, a caskaret, a dress-shield, a biscuit, an article of hardware and other articles of manufacture, and so on indefinitely, having due regard for the necessary size of the transparency, so as not in any way to interfere with the clear showing up of the addressee's name inside. The essential feature in this connection is a window which in general outline is characteristic of a symbol of trade. By "symbol of trade" is meant any design such as mentioned above or trademark characteristic of certain goods or the product of a certain manufactory. Where the window-opening is formed by the application of a grease or equivalent compound to the envelop-blank, the colored or shaded border is essential to the production of a window of properly-defined outline. I thus produce a most unique and at the same time inexpensive and effective advertising medium. Every one needs envelops. These advertising-envelops can be made at small expense. They can be made of any shape or size and made to fit the stationery rather than the stationery made to fit the envelop.

They can be used not only for mailing but for sending out circulars and the like by messenger. The characteristically-shaped window and the associated letters and colored background constitute a most striking advertisement to attract public attention—the object of all advertising.

Having thus described my invention, which I claim, and desire to secure by Letters Patent, is—

As a new article of manufacture, an envelop with an unpunctured face of relatively opaque stock, said envelop-face having a portion to which a preparation has been applied to render such portion transparent, and a colored or tinted border surrounding said transparent portion for the purpose of obliterating or concealing the effects of the tendency of the said preparation to creep into the surrounding opaque stock.

In testimony whereof I have hereunto set my hand in presence of two subscribing witnesses.

MAX M. COHN.

Witnesses:  
J. M. ELLIS,  
S. THOM.

[Drawings and Specification of Letters Patent No.  
824,908, Patented July 3, 1906, Issued to **Max M.**  
**Cohn.**]

FIG. 1.

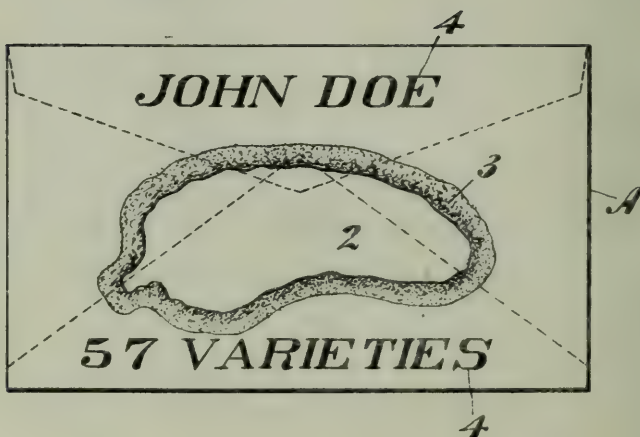
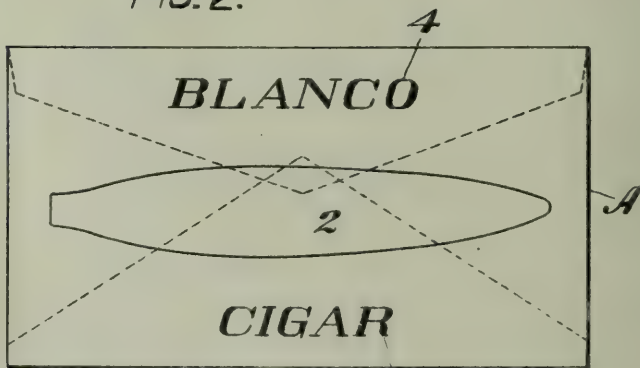


FIG. 2.



WITNESSES,

Chas. E. Chapin.

J. H. Brown

INVENTOR,

May M. Cohn  
By Geo. H. Strong



# UNITED STATES PATENT OFFICE.

MAX M. COHN, OF SAN FRANCISCO, CALIFORNIA.

## ENVELOP.

No. 824,908.

Specification of Letters Patent.

Patented July 3, 1906.

Original application filed November 8, 1904, Serial No. 231,886. Divided and this application filed January 17, 1905. Serial No. 241,459.

*all whom it may concern:*

Be it known that I, MAX M. COHN, a citizen of the United States, residing in the city and county of San Francisco and State of California, have invented new and useful Improvements in Envelops, of which the following is a specification, being a division of my original application, "Envelop," filed November 8, 1904, Serial No. 231,886.

My invention relates to an envelop having transparent space or window in its face through which the name and address on an enclosure may show through.

The object of this invention is to so design a window-opening and to associate with said window such descriptive matter as will offer novel and unique possibilities for advertising.

The invention consists of the parts and the construction and combination of parts, as hereinafter more fully described and claimed, having reference to the accompanying drawings, in which—

Figures 1 and 2 show my invention in its application to specific brands of goods.

In carrying out my invention I take a blank sheet of paper or an envelop-blank of suitable strength and texture which is, say, semitransparent and apply to a portion of one side of the blank, generally on the inside, a preparation which has the property of rendering transparent the portion to which it is applied. The remaining portion or a part of the remaining portion of the blank which forms the face of the finished envelop A is then imprinted with a suitable opaque coloring-matter.

I employ a compound or preparation, such as paraffin-oil and resin or a grease, which produces the desired result of rendering a semitransparent paper transparent. This preparation is stamped or printed on or otherwise applied to the blank to provide the transparency or window of the desired design, and it is applied to such part of the blank where the transparency is desired to appear on the face of the envelop, and it may cover a larger or a lesser space, according to the desired size of the transparency or window.

Since the oily preparation has a tendency to creep or "bleed" beyond the borders of the space imprinted by the stamp or die by which it is applied, and so possibly stain or discolor the rest of the envelop or give a rag-

ged appearance to the window-opening, it is preferred, even where the paper might ordinarily be deemed sufficiently opaque, to apply some sort of coloring-matter at least around the immediate borders of the transparency. This coloring-matter may be applied solid over the face of the envelop, or it may take the form of graduated tints or of being shaded, or the representation of a surrounding border, or cloud effect, as indicated at 3 in Fig. 1.

In any event the effect and object of this colored border are to give a definition to the window-opening and obliterate or cover up the otherwise rough unfinished outline of the window resulting from the encroachments of the oil or grease or other substance beyond its desired limits.

Usually and perhaps preferably the preparation and coloring-matter are applied on opposite sides of the blank, the preparation on the inside and the coloring on the outside. Developing out of this idea of making an unpunctured envelop with a window or transparency for the addressee's name to appear through is the idea of changing the form or outline of this transparency to correspond with the trade-mark, design, or advertised object of a merchant, manufacturer, advertiser, or other person, company, or firm.

Fig. 1 shows a transparency in the shape of a cucumber, the trade-mark of a well-known manufacturer of a great many varieties of goods.

Fig. 2 shows a cigar in transparency and the words "Blanco cigar" in non-transparency on colored opaque field. The number of shapes this transparency may take is almost limitless. Different people might use an envelop with a window in the shape of an oyster, a fish, a cake of soap, and other toilet articles, a cascade, a dress-shield, a biscuit, an article of hardware, and other articles of manufacture, and so on indefinitely, having due regard for the necessary size of the transparency, so as not in any way to interfere with the clear showing up of the addressee's name inside. The essential feature in this connection is a window which in general outline is characteristic of a symbol of trade. By "symbol of trade" is meant any design such as mentioned above or trade-mark characteristic of certain goods or the product of a certain manufactory.

When the window-opening is formed by

the application of a grease or equivalent compound to the envelop-blank, the colored or stained window is essential to the production of a window of properly-defined outline;

5 I thus produce a most unique and at the same time inexpensive and effective advertising medium. Every one needs envelops. These advertising-envelops can be made at small expense. They can be made of any  
10 shape or size and made to fit the stationery rather than the stationery made to fit the envelop. They can be used not only for mailing, but for sending out circulars and the like by messenger. The characteristically-  
15 shaped window and the associated letters and colored background constitute a most striking advertisement to attract public attention, the object of all advertising. I do not wish, however, to limit myself in the ap-  
20 plication of this idea o. an envelop having a window which in outline is characteristic of a symbol of trade to envelops made originally from non-transparent stock, as above described, for I may employ a transparent  
25 stock and form the window-opening by printing with or otherwise applying opaque coloring-matter to a portion of the envelop.

Generally the window-opening by itself alone and unassociated with any descriptive  
30 matter or words forming an essential feature of the trade-mark would have very little significance as referring to a particular manufacturer. For instance, a window in the outline of a bolt might refer to many bolt manu-  
35 facturers, or a window in the shape of a cigar unassociated with a trade-name would be meaningless; but when there is associated with the window-opening of characteristic or  
40 or words usually associated with or relating to the pictorial feature every one seeing the envelop is confronted with a striking adver-

tisement of a particular brand of goods of a particular merchant or firm. At the same time the envelop not only performs its ordinary function as a closure, but the transparent portion of the envelop allows the name and address on the inclosure to show through, protects the writing thereon, and obviates the necessity for an address on the exterior  
5 of the envelop.

Having thus described my invention, what I claim, and desire to secure by Letters Patent, is—

1. An advertising device comprising an  
5 envelop having a window through which the addressee's name on an inclosure may show through, said window being in outline characteristic of some symbol of trade, a tinted or colored border surrounding and giving  
6 definition to said window and permanent advertising matter forming no part of the address, appearing on said tinted border, and related to and in juxtaposition with the out-  
7 line of said window.

2. As an advertising device, an envelop  
8 having a generally opaque face except for a transparent window portion through which  
9 an addressee's name on an inclosure may show through, said window being in general  
10 outline characteristic of a symbol of trade, and permanent printed matter on the face of the envelop related to and in juxtaposition  
11 with the outline of the window and cooperating with said outline to indicate a particular  
12 brand of goods.

In testimony whereof I have hereunto set my hand in presence of two subscribing witnesses.

MAX M. COHN.

Witnesses:

J. M. ELLIS,  
S. THORP.

[Drawings and Specification of Letters Patent No.  
36,393, Patented September 9, 1862, Issued to J.  
S. Brown.]

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# J. S. Brown. Addressing Letters.

No 36,393.

Patented Sept. 9, 1862.

Fig. 1;

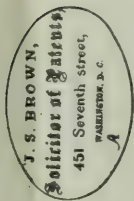


Fig. 3,

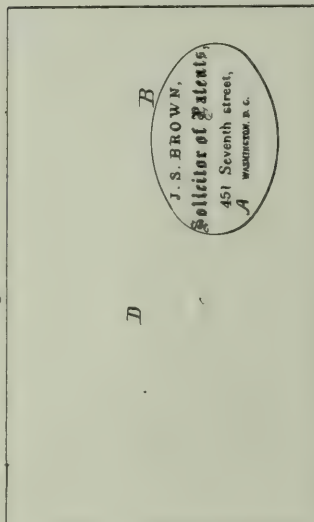


Fig. 4.

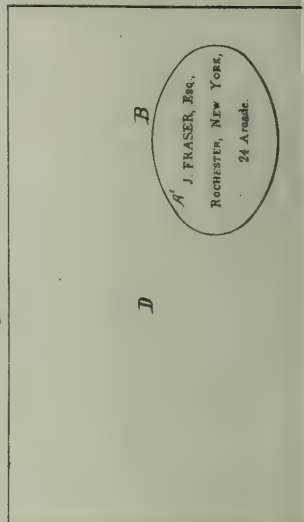


Fig. 2;

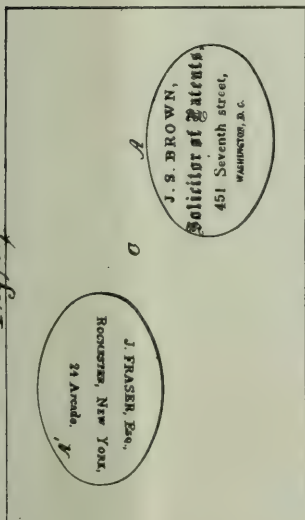


Fig. 5;

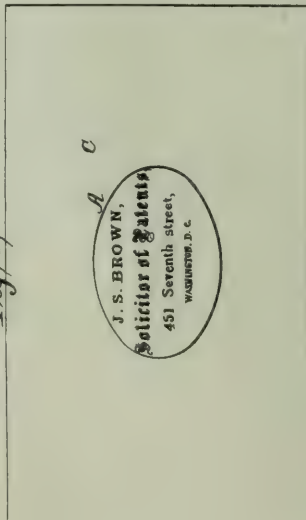
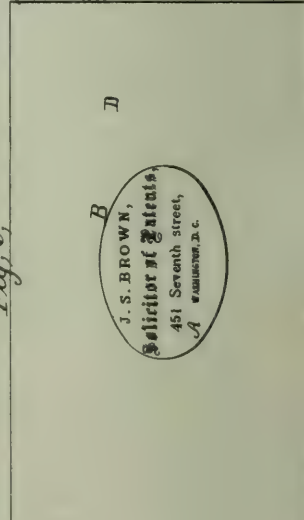


Fig. 6;



Witnesses;  
R. F. Cogswell  
J. S. Brown

Inventor;  
J. S. Brown.



# UNITED STATES PATENT OFFICE.

J. S. BROWN, OF WASHINGTON, DISTRICT OF COLUMBIA.

## ADDRESSING LETTERS.

Specification of Letters Patent No. 36,393, dated September 9, 1862.

*To all whom it may concern:*

Be it known that I, J. S. BROWN, of Washington, in the county of Washington and District of Columbia, have invented a new and Improved Direction for or Method of Directing Letters, Papers, and Packages; and I do hereby declare that the following is a full and exact description thereof, reference being had to the accompanying drawings, making part of this specification, like letters designating corresponding parts in all of the figures thereof.

One part of my invention consists in separate, transferable cards of address, as in Figure 4; and indicated at A, in all of the figures of the drawings. These cards are to contain the name of the person, or party, addressed, his place of residence, and such other particulars as may be useful in giving a correct and sure direction of the letters, papers, or packages; and for letters and packages, may also include the business or professional card of the person, or party, addressed, and any other information usual or convenient and desirable. The direction may be written, but generally and preferably printed. The cards may be only large enough to contain the address, as indicated in Fig. 1; or the address may be attached to, or printed on, slips of paper, C, of sufficient length and breadth, nearly or quite to fill the envelop, as shown in Figs. 2, and 5. Or they may be provided with an adhesive substance on the back, for attaching to envelops, or wrappers, like stamps.

The other part of my invention consists in an improved envelop, or wrapper, D. The improvement is, to make the envelop, or wrapper, transparent, sufficiently to clearly show the cards of address through its face. There may be only a transparent portion B, large enough to exhibit the "direction" through it; and this may be made either by rendering a portion of the envelop, or wrapper, itself transparent, by the same means or substances as employed for making tracing paper or any other, in the process of manufacturing the paper, or the envelop, leaving the remainder of the envelop opaque. Or a piece of the envelop, of the proper size and shape, may be cut out of the envelop; and the aperture, thus made, covered with transparent paper, or other equivalent transparent covering. For some uses, the aperture need not have the transparent covering; but some of the advantages of the complete

invention are thereby lost. The transparent portion may be either near one corner of the envelop, as shown in Figs. 3, and 4; or near the center thereof, as in Fig. 6.

Instead of making only a small portion of the envelop, or wrapper, transparent, the whole envelop, or, at least, the whole face of it, may be made transparent. There may be an unsealed, opaque wrapper inside of the entirely transparent envelop, if desired; the said wrapper having the address card printed on, or attached to it, or separate therefrom, as may be most convenient.

The card of address is to be simply placed within the envelop, or wrapper, along with the letter, paper, or other article inclosed, in such a manner as to exhibit the direction through the transparency of the envelop. When the paper C, of the address card nearly fills the envelop, as indicated in Figs. 2, and 5, there will be no difficulty in securing the direction in the right position. If the transparent portion B, of the envelop is near one corner, as in Figs. 3, and 4, the card of address A, will be in a corresponding position on the paper C, as shown in Fig. 2. And if the transparent portion of the envelop is in the middle thereof, as in Fig. 6, the card of address will also correspond, in position, on the paper C, as shown in Fig. 5.

When persons, or parties, correspond frequently, or in any case, if desired, the directions of both persons, or parties, may be on the same slip of paper. If the address of one person, or party, is near one corner of the paper C, as shown at A, Fig. 2, and exhibited through the envelop in Fig. 3, by a corresponding letter, the address of the other person, or party, in correspondence, may be on the same side of the paper C, near the corner diagonally opposite, as indicated at A', Fig. 2, and exhibited through the envelop by the corresponding letter, in Fig. 4. But if the address of one person, or party, is on the middle of the paper C, as shown in Fig. 5, and exhibited through the envelop in Fig. 6, the address of the other person, or party, will be on the middle of the other side of the paper slip.

The uses and advantages of this invention are many and important. Among the most obvious, the following may be mentioned:—

First, a considerable saving of time is effected, since the writing of every address

is obviated. For it will be found extremely advantageous to have the address printed; and, since the same card of address may be used again and again, a supply, in the first instance, sufficient to furnish each correspondent with one, will last for years. And if the cards of address should be written, the comparatively small number required, may be prepared in a very short time.

Second, greatly improved distinctness and accuracy of direction are thus secured; a consideration of the utmost importance, since misdirections, and consequent losses and inconveniences will be almost entirely avoided; and the perfect clearness and correctness of the address will enable the post-office clerks to handle the letters, papers, and packages much faster and with much less liability to mistakes, in mailing and delivering than heretofore. Besides, the printing of the cards of address will enable persons to have their address more fully and particularly given—even to such minuteness, (in smaller characters,) not only as the street, and number of the house or office, but more particular directions, as, for instance, how the carriers may find the person addressed, or at what hours of the day, or night, in special places.

Third, business, or professional, men can have their business, or professional, cards continually accompanying their post-office address, at a trifling cost, the cards of address required, being comparatively few, as explained above.

Fourth, newspaper publishers may greatly facilitate the mailing of papers to subscribers, who will furnish, on subscribing, a number of cards of address equal to the number of papers subscribed for, to be yearly (or at any other stated period) returned to the publishers, without any additional cost. These address cards may be

put in small compartments of a subscription case, whence they may be readily taken, and inclosed in the transparent wrapper, at once, with the papers.

Fifth, the saving to the Government, by diminishing clerk hire, in the large post-offices, and otherwise, incidentally, in connection with franking, and by diminishing the number of advertised and dead letters, &c., when the improvement shall have come into general use, will be quite great. The Government may further facilitate the operations of the post-office department, by special law, or regulations, such as directing that the name of the distributing office be printed on the card of address.

The cost of manufacturing the improved envelopes will scarcely, if any, exceed that of ordinary envelopes now in use. For while the additional cost of rendering the envelopes and wrappers transparent, will be but little, a cheaper quality of paper may be employed, not requiring to be finished so highly as for receiving the pen. The cards of address also will cost only a mere trifle. Particularly, business men will really save expense, by being enabled to dispense with many of the ordinary business cards.

What I claim as my invention and desire to secure by Letters Patent, is—

1. The envelopes made transparent, (or equivalently prepared,) so as to receive and properly exhibit the cards of address, substantially as and for the purpose herein specified.

2. I also claim the combination of the cards of address and the transparent (or equivalent) envelopes, substantially in the manner and for the purpose herein specified.

J. S. BROWN.

Witnesses:

WM. FRANK BROWN,  
R. F. OSGOOD.

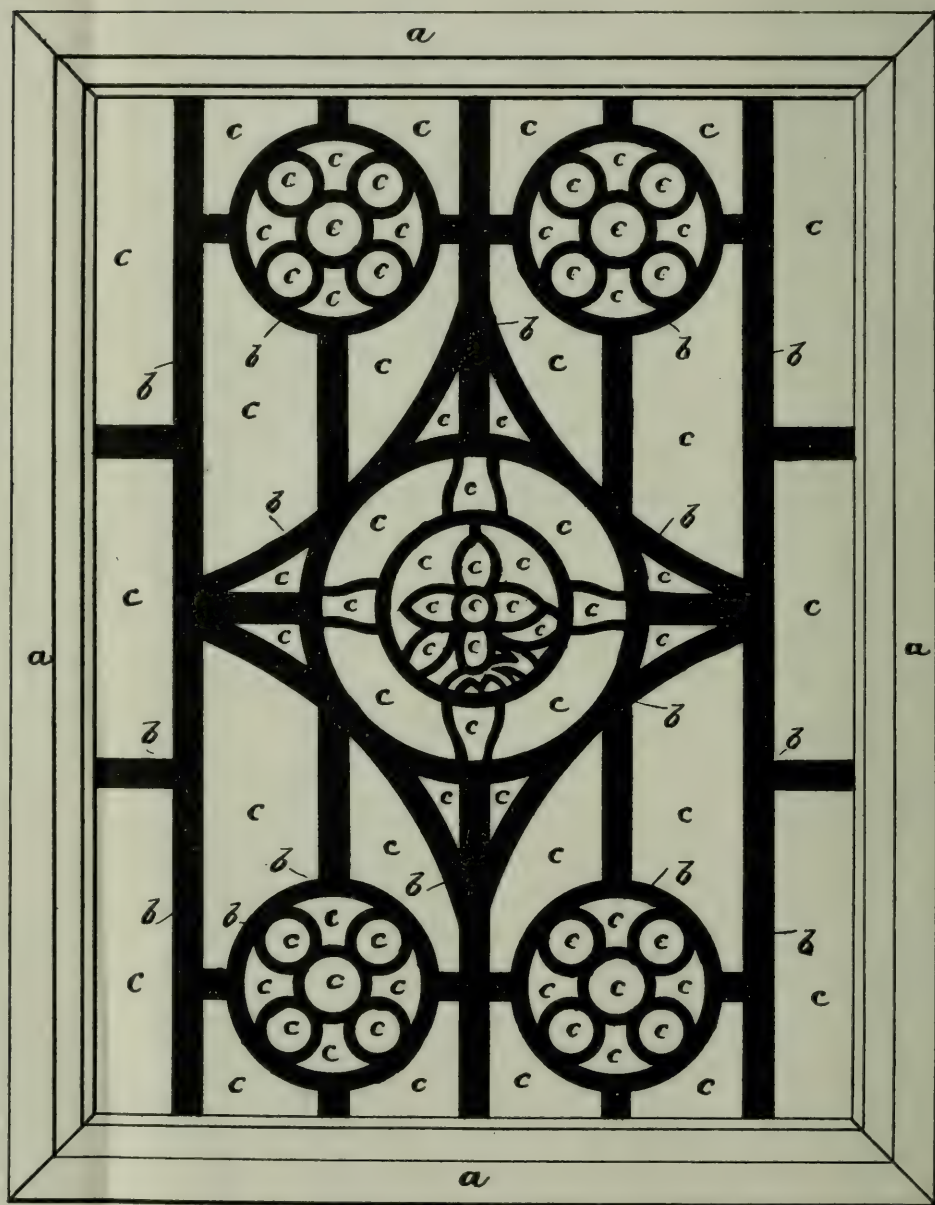
[Drawing and Specification of Letters Patent No.  
8,514, Reissued December 3, 1878, to Robert  
M. Tudor.]



## Ornamented Window-Glasses.

No. 8,514.

Reissued Dec. 3, 1878.



Witnesses:



# UNITED STATES PATENT OFFICE.

ROBERT M. TUDOR, OF PHILADELPHIA, PENNSYLVANIA.

## IMPROVEMENT IN ORNAMENTED WINDOW-GLASS.

Specification forming part of Letters Patent No. 191,270, dated May 29, 1877; Reissue No. 8,514, dated December 3, 1878; application filed November 20, 1878.

*To all whom it may concern:*

Be it known that I, ROBERT M. TUDOR, of the city of Philadelphia, State of Pennsylvania, have invented a new and useful Article of Manufacture for Ornamenting Window-Glass, of which the following is a specification:

The object of my invention is the production of ornamental designs cheaply upon paper, imitating stained glass set in metallic sashes, easily applicable to ordinary glass window-panes.

The nature of my invention consists in paper having opaque lines printed, painted, or stained thereon, resembling the outlines of leaden sash-bars usually employed in the construction of stained-glass windows, and transparent coloring applied by printing, staining, or painting to the spaces between the opaque lines. This paper is easily transported and readily applied to window-panes; and when oiled or coated and filled in the pores with resinous substances, as by varnishing, it becomes in the colored portions more or less transparent, and presents the pleasing effect of stained glass of usual construction.

Plain paper, such as lithographic or writing paper, may be used. Paper more transparent is preferable. The opaque lines and coloring may be applied on one or both sides of the paper. The paper so prepared may be applied to the glass in various ways—by gumming at the corners only, by pins or button-fastenings, or by gumming at the margins. Applied in any of these ways it is readily removed.

When to be used permanently, it is cemented to the glass by any transparent adhesive material, such as paste, starch, varnish, albumen, or gum, and when afterward varnished (preferably with copal varnish) it becomes waterproof and of increased transparency.

The paper after being applied to a window

may be further protected by covering it with glass.

The low cost and extreme lightness and portability of the prepared paper permits of its application in situations where the high first cost and difficulties and expenses of transportation and risk of accident prevent the use of stained glass.

The annexed drawing represents a front view of a pane of glass with the ornamented paper prepared as described applied thereto, mounted in a sash or frame.

*a* represents the frame or sash; *b*, the opaque or leaden sash-lines, and *c* the transparent colored spaces or figures.

The invention is vended in the form of the prepared paper, and usually applied to window panes or lights after they have been set in the sash.

Printing has thus far been the preferable mode of preparing the paper.

Having described my invention and the mode of making and using the same, I claim as new and useful and as my original invention—

1. As a new manufacture, paper having opaque lines imitating the lead sash-bars of stained-glass windows and stained or colored transparent or translucent spaces or figures adapted to ornamenting windows, substantially as and for the purpose set forth.

2. As a new manufacture, an ornamented glass window-pane consisting of ordinary glass, in combination with a paper containing opaque lines and transparent or translucent colored spaces imitating leaden sash and colored glass in stained windows, substantially as set forth.

R. M. TUDOR.

Witnesses:

J. DANIEL EBY,  
S. LLOYD WIEGAND.



[Drawing and Specification of Letters Patent No.  
766,902, Patented August 9, 1904, Issued to  
George Reese.]

PAPER FOR MAKING ENVELOPS.

APPLICATION FILED JAN. 15, 1904.

NO MODEL.

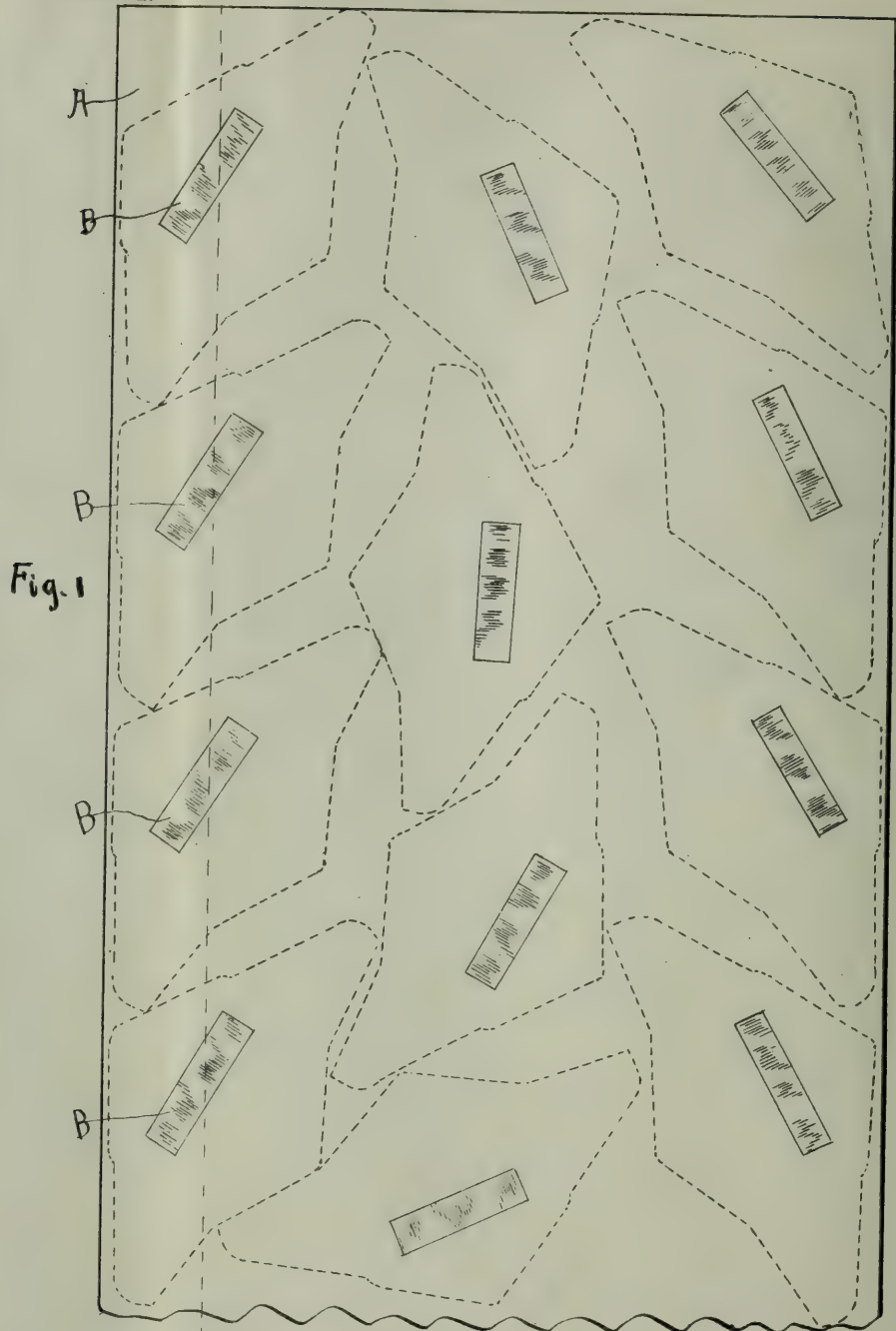


Fig. 1

Fig

Witnesses:

*William V. Bond*  
*Walker Banning*

Inventor.

*George Reese*  
By *Banning & Banning*



# UNITED STATES PATENT OFFICE.

GEORGE REESE, OF CHICAGO, ILLINOIS, ASSIGNOR OF ONE-HALF TO  
JULIUS REGENSTEIN, OF CHICAGO, ILLINOIS.

## PAPER FOR MAKING ENVELOPS.

**SPECIFICATION** forming part of Letters Patent No. 766,902, dated August 9, 1904.

Application filed January 15, 1904. Serial No. 189,192. (No specimens.)

*To all whom it may concern:*

Be it known that I, GEORGE REESE, a citizen of the United States, residing at Chicago, in the county of Cook and State of Illinois, have invented certain new and useful Improvements in Paper for Making Envelops, of which the following is a specification.

The object of this invention is to produce a sheet or roll of paper adapted for the formation of a series of envelop-blanks so formed that when a letter or other article is inclosed within the completed envelop the portion of the letter containing the address will be legible through the envelop and the remainder of the letter or other article obscured, so that the contents of the letter cannot be seen, thus obviating the necessity for providing an additional address upon the exterior of the envelop.

The invention further consists in so forming the strip or roll that when the blanks are stamped or cut therefrom there will be no necessity for cutting or perforating the blank in order to provide for the display of the address upon the inclosed letter, which cutting or perforating would of course tend to impair the strength of the blank, increase the cost of manufacture of the envelop, and waste the portions cut therefrom.

In the drawings illustrating the invention, Figure 1 is a portion of a strip or roll of paper containing a plurality of blanks, each blank adapted to form an envelop of the character above indicated; and Fig. 2 is a sectional view of Fig. 1.

The present invention consists in a sheet of paper A, adapted for the manufacture of envelops of such shape and size that a series of blanks can be cut therefrom, and in Fig. 1 the position of the several blanks to be cut from the paper is indicated by dotted lines so arranged that a large number of blanks can be cut from a single sheet of paper without wasting any more of the paper than is necessary. The arrangement indicated serves merely for purposes of illustration, as it is obvious that the shape and size of the intended blanks will determine their position with respect to the sheet of paper from which they are cut.

Within the sheet, which when completed will have its major portion of opaque substance, are a series of transparent spaces B, one for each blank, and said spaces are so arranged with respect to the blanks that when the blanks are cut the spaces will occupy a position on the front of the envelop which will coincide with the space occupied by the address of the inclosed letter or article, and each of said spaces in the completed sheet will be sufficiently transparent to allow the address upon the inclosed letter or article to be visible therethrough, thereby obviating the necessity for an address on the exterior of the envelop.

The body of the completed sheet of paper will be opaque, and the spaces, which are formed integral with the body of the paper, will be transparent or semitransparent in one of the following ways: first, by reason of the less density or thickness of the paper at the positions indicated due to a greater pressure or to other means being provided in the manufacture of the paper to obtain this result; second, by the application of paint, ink, or similar opaqueing substance to all portions of a transparent paper with the exception of the intended spaces, which in this case also will likewise be of less density than the remaining portions of the sheet, since the opaqueing substance when applied forms a portion of the substance of the completed sheet, and, third, by the application of oil or similar substance to an opaque paper at those points which it is intended to render transparent. It is preferred, however, to employ the first method and form the sheet of paper with a series of spaces therein of less density than the surrounding material, but integral therewith.

A sheet of paper formed in any one of the ways indicated can be afterward cut up into a series of blanks along the dotted lines, as shown, each of the blanks having properly positioned therein a transparent portion, and the presence of said transparent portion tends in no way to weaken the strength of the blank or increase the cost of the completed envelop, which will be much superior to one having a perforation cut therein for the display of the

address or to one having a separate section of transparent paper cut and pasted over such perforation.

5 What I regard as new, and desire to secure by Letters Patent, is—

10 1. As a new article of manufacture, a sheet adapted for the making of a series of envelop-blanks, said sheet consisting of an opaque body and a series of transparent portions so  
15 positioned in the body as to permit a series of envelop-blanks to be cut therefrom, the transparent portions being so positioned in the sheet that the blanks may be cut therefrom with the least possible amount of waste, each  
20 blank being adapted for the formation of an envelop having the transparent portion occupy the address-space of the envelop, substantially as described.

2. As a new article of manufacture, a sheet  
25 adapted for the making of an envelop-blank, said sheet consisting of an opaque body and a transparent space formed integral with the body and so positioned in the body as to per-

mit a blank to be cut from the sheet, said blank adapted to form an envelop having the transparent portion occupy the address-space of the envelop, substantially as described. 25

3. As a new article of manufacture, a sheet adapted for the making of a series of envelop-blanks, said sheet being formed of transparent 30 paper having an opaqueing substance applied to those portions which it is intended to render opaque, and a series of transparent spaces in the sheet so positioned as to permit a series of blanks to be cut from the sheet, the trans- 35 parent portions being so positioned in the sheet that the blanks may be cut therefrom with the least possible amount of waste, each blank adapted for the formation of an envelop having an opaque body and a transparent portion occupying the address-space of the envelop, substantially as described. 40

GEORGE REESE.

Witnesses:

WILLIAM P. BOND,  
WALKER BANNING.

**[Drawing and Specification of Letters Patent No.  
746, of William Hole, Accepted July 7, 1894.]**





N<sup>o</sup> 746



A.D. 1894

Date of Application, 12th Jan., 1894

Complete Specification Left, 1st June, 1894—Accepted, 7th July, 1894

## PROVISIONAL SPECIFICATION.

### Improved Coin Bag.

I, WILLIAM HOLE, care of Samuel Henry Stockwood, Solicitor, Bridgend, in the County of Glamorgan, do hereby declare the nature of this invention to be as follows:—

Coin bags as used in banks, railway offices shops and other like places of business have hitherto usually been constructed of paper or woven material of a texture sufficiently thick to prevent the nature of their contents being ascertained without the bag being opened.

This often causes great annoyance and waste of time especially when a number of bags some containing gold, some silver, and some bronze or nickel become mixed together when it is found necessary, to prevent the possibility of a mistake occurring, to open each bag in order that the nature of their contents may be ascertained.

Now my invention has for its object an improved coin bag of such construction that the nature of the contents can be ascertained at a glance.

For this purpose I construct my improved coin bag of paper or other suitable material of a similar size and shape to those ordinarily used. My bags are however perforated by punching, or in any other suitable manner on one or all sides with holes at any desirable distance apart, and of such a size that the smallest coins cannot fall therethrough.

With bags so constructed it will be unnecessary to open them to ascertain the nature of their contents as this can be easily and quickly done by reason of the perforations, aided if necessary by black or other coloured lines on the exterior of the bag which would form a relief to the colour of the coins it contains.

Dated this 11th day of January 1894.

CASTLE SMITH,

“Invention” Office, 54, Fleet Street, London, E.C.,  
Agent for the Applicant.

## COMPLETE SPECIFICATION.

### Improved Coin Bag.

I, WILLIAM HOLE, care of Samuel Henry Stockwood, Solicitor, Bridgend, in the County of Glamorgan, do hereby declare the nature of this invention and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement:—

Coin bags as used in banks, railway offices shops and other like places of business have hitherto usually been constructed of paper or woven material of a texture sufficiently thick to prevent the nature of their contents being ascertained without the bag being opened.

This often causes great annoyance and waste of time especially when a number of bags, some containing gold, some silver and some bronze or nickel, become mixed together when it is found necessary to prevent the possibility of a mistake occurring to open each bag in order that the nature of their contents may be ascertained.

Now my invention has for its object an improved coin bag of such construction that the nature of the contents can be ascertained at a glance.

[Price 8d.]

*Hole's Improved Coin Bag.*

For this purpose I construct my improved coin bag of paper or other suitable material of a similar size and shape to those ordinarily used. My bags are however perforated by punching, or in any other suitable manner on one or all sides with holes at any desirable distance apart and of such a size that the smallest coins cannot fall therethrough.

And in order that my invention may be more fully understood and carried into practice I will now proceed to describe the same, of which the accompanying drawing is a perspective view of a bag constructed according to my invention.

The bag *a* is constructed of paper, linen or other suitable material and perforated with holes *b* of any desirable shape and distance apart and of such a size that the smallest coins cannot escape through them.

With bags so constructed it will be unnecessary to open them to ascertain the nature of their contents as this can be easily and quickly done by reason of the perforations, aided if necessary by black or other coloured lines *c* on the exterior of the bag which would form a relief to the colour of the coins it contains.

Having now particularly described and ascertained the nature of my said invention and in what manner the same is to be performed, I declare that what I claim is:—

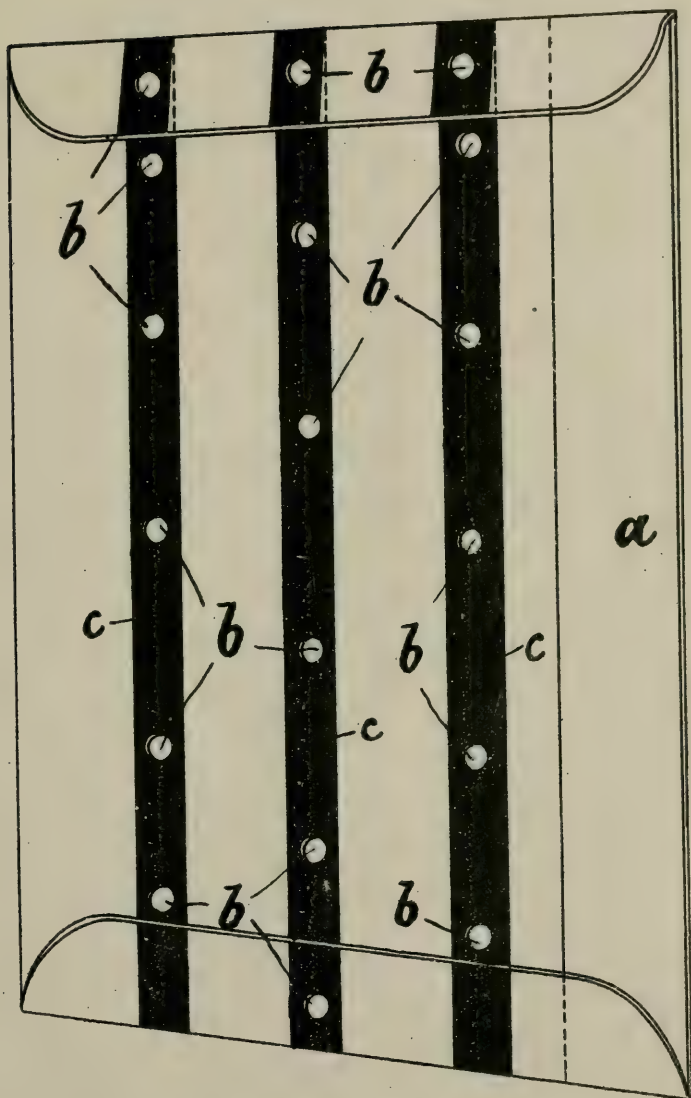
Perforated coin bags with or without relief colouring substantially as and for the purpose described and illustrated in the accompanying drawing.

Dated this 1st day of June 1894.

CASTLE SMITH,  
“Invention” Office, 54, Fleet Street, London, E.C.,  
Agent for the Applicant.

HOLE'S COMPLETE SPECIFICATION.

(2<sup>nd</sup> Edition)







[Drawings and Specification of Letters Patent No.  
21,711, of Henry H. Leigh, Accepted May 7,  
1895.]



N<sup>o</sup> 21,711



A.D. 1894

Date of Application, 10th Nov., 1894

Complete Specification Left, 1st May, 1895—Accepted, 7th May, 1895

PROVISIONAL SPECIFICATION.

[Communicated from abroad by THE CELLULOID COMPANY, of Ferry Street, Newark, in the State of New Jersey, U.S.A., Manufacturers of Celluloid.]

Improved Device for Exhibiting and Setting-off Dress Materials.

I, HENRY HARINGTON LEIGH, Assoc. M. Inst. C.E., Fel. Ch. Inst. P.A., F.I. Inst., practising as Phillips and Leigh at No. 22 Southampton Buildings, Chancery Lane, in the Administrative County of London, Engineers and Patent Agents, do hereby declare the nature of this invention to be as follows :—

5 My invention relates to a device adapted to shew to the eye how a given dress material will look when it is made up and worn.

In carrying in into effect I provide a portable sheet on which is marked an outline of the human figure or of some portion of it, *e.g.*, the half length or the legs. The outline is finished as far as the head, neck, hands and feet are concerned, 10 preferably in colour, and all the sheet outside the said outline is opaque while all the surface within the outline concerned by the dress material is transparent, and lightly lined and shaded to indicate buttons, pockets and the like and show up contour.

The device is used by laying it on the material. The combination of as much 15 of the latter as is visible through the transparent portion, with the light lines and shading as well as with the finished portions referred to, produces the appearance of a human figure or portion thereof clothed in the material in question. The material for the sheet is, preferably, celluloid.

Dated this 9th day of November 1894.

HENRY H. LEIGH,  
C.P.A.

COMPLETE SPECIFICATION.

Improved Device for Exhibiting and Setting-off Dress Materials.

I, HENRY HARINGTON LEIGH, Assoc. M. Inst. C.E., Fel. Ch. Inst. P.A., 25 F.I. Inst., practising as Phillips and Leigh at No. 22 Southampton Buildings, Chancery Lane, in the Administrative County of London, Engineers and Patent Agents, do hereby declare the nature of this invention and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement :—

30 My invention relates to a device adapted to shew to the eye how a given dress material will look when it is made up and worn.

In carrying it into effect I provide a portable sheet on which is marked an outline of the human figure or of some portion of it, *e.g.*, the half length or the legs. The outline is finished as far as the head, neck, hands and feet are concerned, 35 preferably in colour, and all the sheet outside the said outline is opaque while all the surface within the outline concerned by the dress material is transparent, and lightly lined and shaded to indicate buttons, pockets and the like and to show up contour.

The device is used by laying it on the material. The combination of as much

*Leigh's Improved Device for Exhibiting and Setting Off Dress Materials.*

of the latter as is visible through the transparent portion, with the light lines and shading, as well as with the finished portions referred to, produces the appearance of a human figure, or portion thereof, clothed in the material in question.

The accompanying figures illustrate the invention as made up to shew to a customer how a certain cloth would look when made up into a suit or, in other words, how a suit made from the said cloth, would look on him—the customer.

Figure 1. is a front view of my improved device.

Figure 2. is a back view of the same.

The device consists fundamentally of a sheet of a suitable size for the purpose. The particular purpose for which the device illustrated was made was to shew or set off a man's suit of clothes. The sheet in question is therefore, of the proper size to carry a full length representation of a man. Whether a hat, walking stick or umbrella should be included or not, would depend, more or less, upon whether the suit under consideration, was intended for indoor or outdoor wear. It is obvious that the representation itself need not be full length: it suffices if it be long enough to shew up the details of the three garments of the suit, that is the edges, pockets, facings, button holes and the more usual creases as well as the visible portions in shadow. This limit brings the sheet within the limit of portability in respect of its size,—the term "portability" being understood as including easy manipulation on the part of the salesman in the way of laying the device down on a roll of cloth quickly transferring it to another roll, holding it up against a piece hanging down from the top of a pile, the edge of a counter and the like. I will now pass on to the question of material for the said sheet. The conditions under which the device will be used, bars the use of a fragile or brittle material, such as glass, but require one possessing a relative rigidity—sufficient to make it—the device—lay out flat without turning up at the corners. It—the material—must be naturally transparent or at any rate capable of being made transparent. Celluloid meets all the requirements of my invention, and for that reason the improved device now under Specification is, preferably, made from that material, but the invention does not limit me in this respect, inasmuch as I may make use of any material which may be suitable for the purpose of the invention.

The sheet above mentioned as the fundamental portion, or the foundation, of the invention, is divided by the outline *a* of the man's figure clothed as far only as the suit in question—coat, vest and trousers is capable of clothing it—into two portions. One of these portions, that which extends from the said outline *a* to the edge *b* of the sheet, is opaque. This opacity is essential to the invention: and that is the reason why the opaque portion is represented as black. Its function is to cover up the material of the cloth undergoing exhibition and inspection, for an area outside the said outline *a*, sufficiently extensive in all directions to prevent the cloth outside the outline, obtruding itself into the customer's field of view. I prefer, however, that the opacity shall be secured without dullness of colour, and for that reason I cover the sheet outside the said outline with gold colour, laying this colour on the back of the sheet.

It has already been explained that my invention requires that the portion *c* of the sheet, that is as much of the latter as is within the outline *a*, shall be transparent. If celluloid is the material of the sheet, then the necessary transparency is already there. If, on the other hand, the material of the sheet is opaque normally such within portion *c* must be made transparent, or of transparent material, care being taken when the opaque portion and the transparent portions are of distinct materials, that they are evenly and well joined along the said outline *a*.

*d, d* are the lines and shadings which are added to the transparent portion *c* to distinguish and to shew up the above mentioned details of the different garments.

The sheet finished as far as the foregoing description takes the reader,



*Leigh's Improved Device for Exhibiting and Setting Off Dress Materials.*

realises the present invention in its simplest form. A more perfect embodiment of the invention is to add on the front side of the device, the boots; the hands or hand, gloved or not, and holding something, *e.g.* in one of them, a cigar, and in the other, a walking stick; the neck with collar, scarf and shirt front, and, 5 lastly, the face and head with or without a hat or other head covering. The presence of these addenda (as they are hereinafter termed) adds verisimilitude actuality, life, to the presentment furnished by the use of the device on the cloth, in question. Such addenda are accordingly finished in natural colour and this latter must obviously be opaque, for the customer won't want to see, 10 nor his tailor to shew him, how the cloths on view would look on his face or feet: excepting that when the head dress is a cloth cap, the relative part of the device may be transparent.

In specifying my invention, I have referred to a device for a three garment male suit as the subject of illustration and specification, but it is to be 15 distinctly understood that the present invention includes the improved device made and adapted to be used, as described above; for single garments, *e.g.*, for trousers only; or for two garments, *e.g.*, a morning coat and vest; or for an overcoat; and further, for either back or front of the garment, or garments or suit; as well as for under garments, and in all cases irrespective of size of 20 garment or of suit, as well as of either the age or sex of the future wearer.

When the improved device is made for use in respect of a single garment, *e.g.*, of trousers only, only that part of it, is transparent, and the device itself bears no more of the remaining portion of the suit or of the person, than may be necessary to produce a lifelike presentment.

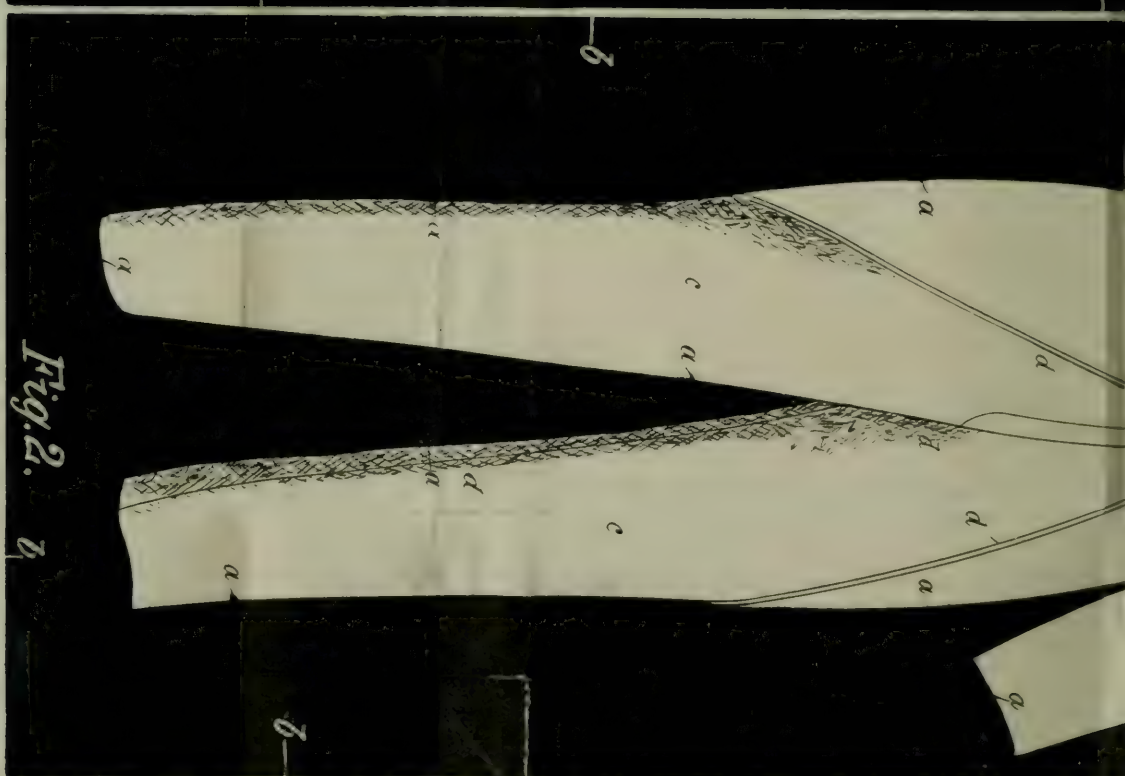
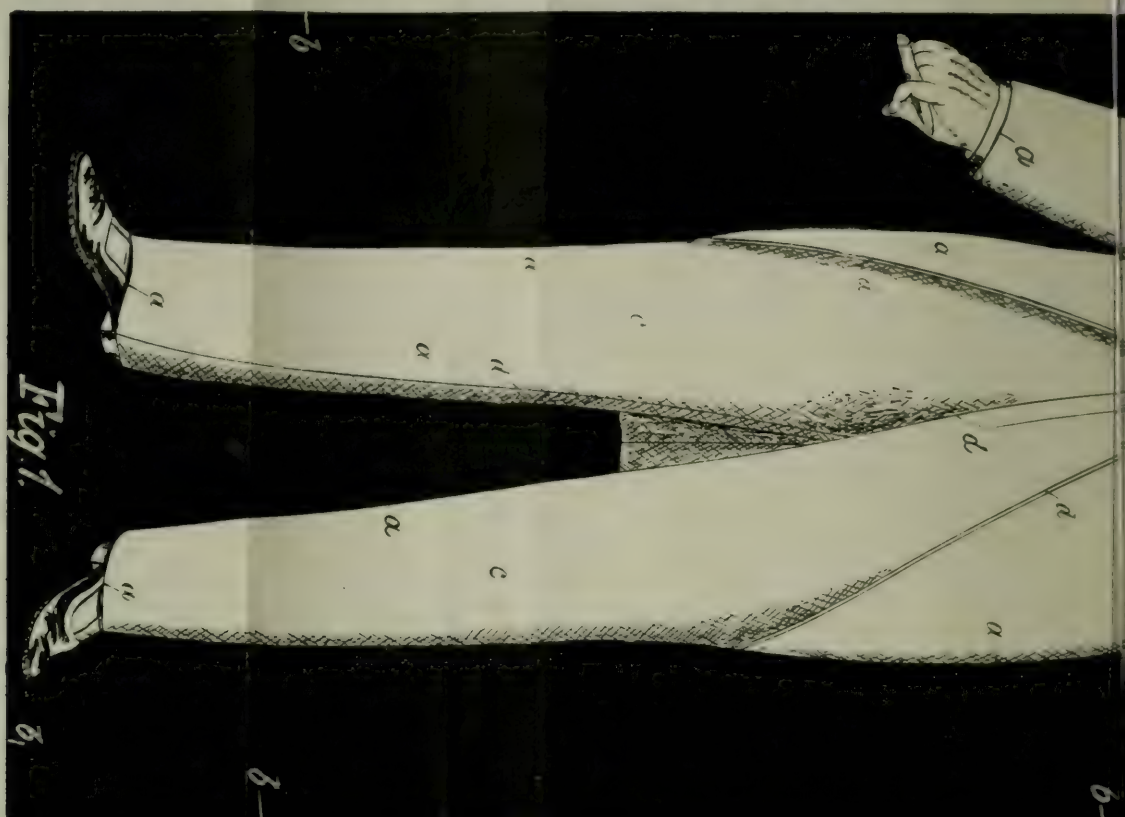
25 Having now particularly described and ascertained the nature of my said invention and in what manner the same is to be performed, I declare that what I claim is:—

1. The combination with and in a portable sheet, of an opaque portion extending outwards from a certain outline to the edge of the sheet, and a 30 transparent portion, the latter being as much of the sheet as included within the said outline; as set forth.

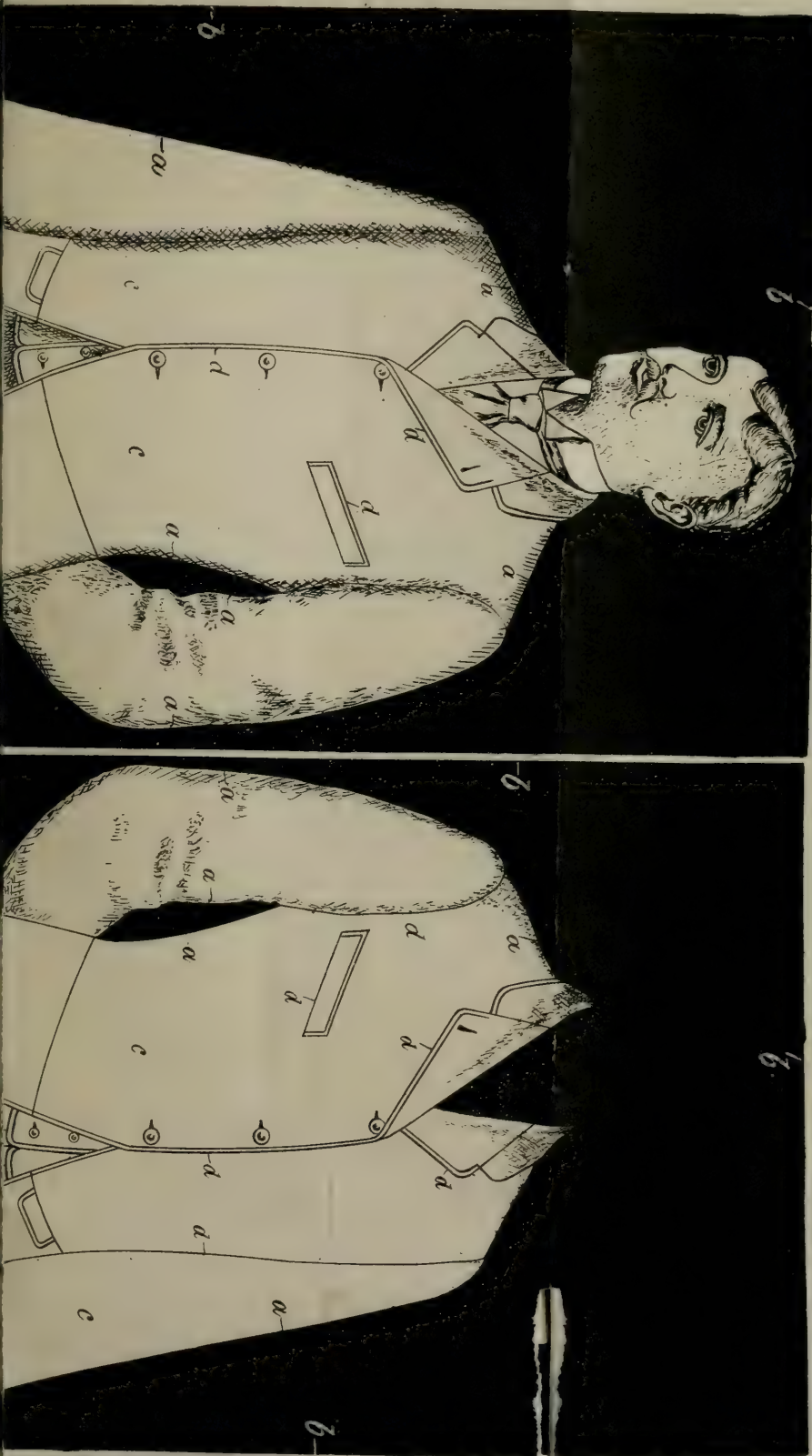
2. The combination with the subject matter of the preceding claim, of the hereinbefore described addenda or of some of them, as set forth.

Dated this 1st day of May 1895.

H. H. LEIGH.



[This Drawing is a reproduction of the Original on a reduced scale]



If on the other hand, the material of the sheet is  
 + be made transparent, or of trans- 50  
 and the transparent



[Drawings and Specification of Letters Patent No.  
11,876, of August Busch, Accepted July 4, 1896.]



Fig. 1.

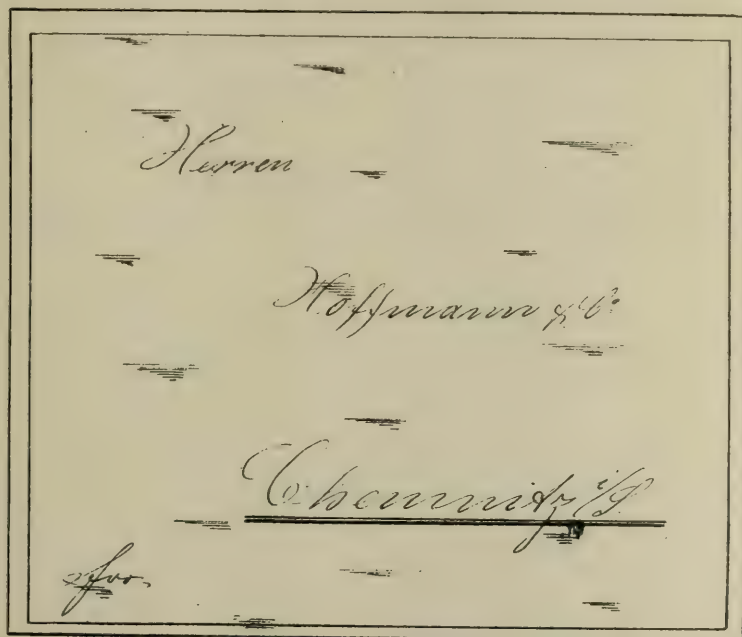
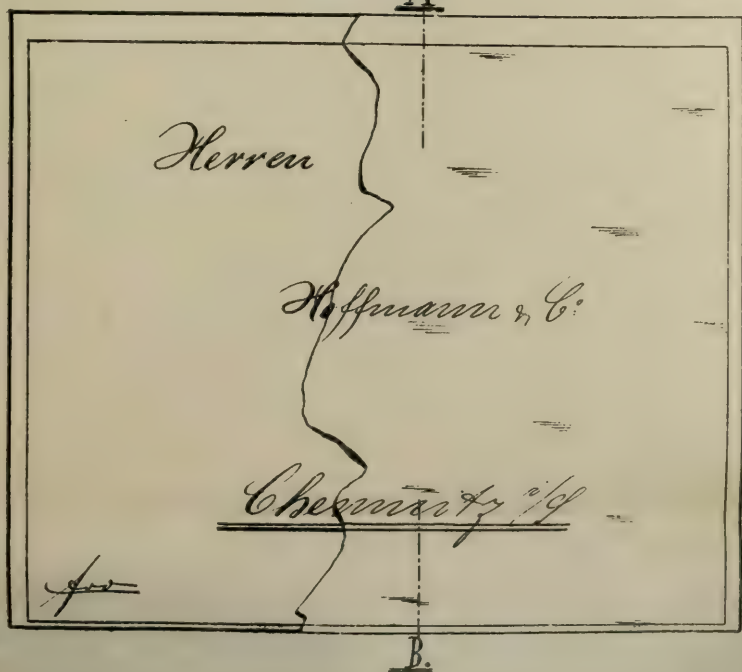


Fig. 2.

Fig. 3 A-B.







N<sup>o</sup> 11,876



A.D. 1896

Date of Application, 1st June, 1896—Accepted, 4th July, 1896

COMPLETE SPECIFICATION.

**Improvement in or relating to Envelopes for Letters and other Papers.**

I, AUGUST BUSCH, Merchant, of Friedrichstrasse 35, Neuss, in the German Empire, do hereby declare the nature of this invention and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement:—

5 This invention relates to postal envelopes which differ from others by the fact that a portion or the whole of the envelope is transparent, so that the address of the letter may be read through the envelope, and need not, therefore, be written or printed on the same.

10 The letter or other contents should, of course, be folded or arranged in such a manner, that the address of the person for whom the letter is intended, will be situated immediately under the front of the envelope. The address of the sender may be printed on the envelope or on the letter so as to appear either through the transparent front or back of the envelope.

5 In some cases the front of the envelope is made of transparent material, while the back is opaque, or *vice-versa*; or a portion of the front may be transparent, while the rest of the envelope is opaque, or the back and a portion of the front may be transparent.

10 The desired contrast or difference may be produced either by choosing two different kinds of paper, or by printing with opaque colouring matter applied to a portion of the envelope.

In the accompanying drawings.

Fig. 1 is an outside view of an envelope and letter embodying my invention, the address appearing through the envelope.

5 Fig. 2 shows a transparent envelope, having the left half of the front torn off, so as to expose the address underneath.

Fig. 3 is a section along line A—B of Fig. 2.

This improvement will not only save the trouble of addressing the envelope, but it will render the address practically indestructible and prevent the mistakes which are sometimes made in enclosing letters in the wrong envelopes.

10 Having now particularly described and ascertained the nature of my said invention and in what manner the same is to be performed, I declare that what I claim is:—

1. A letter envelope made partly or wholly of transparent material, substantially as and for the purpose described.

2. An envelope in which the front or a part of it is transparent, in combination with a letter having the address so arranged that it appears through the envelope, substantially as described.

Dated this First day of June 1896.

FAIRFAX & WETTER,  
433, Strand, London, Agents.



[Drawings and Specification of Letters Patent No.  
29,956, of Erich August Boldt, Accepted Oct. 1,  
1898.]





N<sup>o</sup> 29,956



A.D. 1897

*Date of Application, 17th Dec., 1897*

*Complete Specification Left, 24th May, 1898—Accepted, 1st Oct., 1898*

**PROVISIONAL SPECIFICATION.**

**Improvements in or relating to the Packing of Hooks and Eyes and other Articles.**

I, ERICH AUGUST BOLDT, Manager of 3, Edmund Place, Aldersgate Street, in the County of Middlesex, do hereby declare the nature of this invention to be as follows:—

This invention relates to the packing or packing cases for hooks and eyes, pins and other similar articles.

The invention consists in providing the packet, letter, envelope or whatever it may be termed, with one or more openings which are closed by some form of transparent material such for example as celluloid. By this means the nature of the contents can be ascertained, the packet being in other respects the same as before.

More than one of these openings protected by transparent material may be used and they may be of any desired shape or size or pattern. For example they may be made to represent the initials of the firm selling them or may otherwise be utilised for advertisement purposes, trade marks or the like.

Dated this 17th day of December 1897.

**BOULT & WADE,**  
Agents for the Applicant.

**COMPLETE SPECIFICATION.**

**Improvements in or relating to the Packing of Hooks and Eyes and other Articles.**

I, ERICH AUGUST BOLDT, Manager, of 3, Edmund Place, Aldersgate Street, in the County of Middlesex, do hereby declare the nature of this invention and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement:—

This invention relates to the packing or to packing cases for hooks and eyes, pins and other similar articles.

The invention consists in providing the packet, wrapper envelope or whatever it may be termed in which the goods are enclosed, with one or more openings which are closed by some form of transparent material such for example as celluloid. By this means the nature of the contents can be ascertained, the packet being in other respects the same as before.

More than one of these openings protected by transparent material may be used and they may be of any desired shape or size or pattern. For example they may be made to represent the initials of the firm selling them or may otherwise be utilized for advertisement purposes, trade marks or the like.

[Price 8d.]

*Improvements in or relating to the Packing of Hooks and Eyes and other Articles.*

The accompanying drawings, throughout which like letters refer to like parts, show by way of example, various wrappers constructed according to this invention.

In Figures 1 and 2 A is a folded paper wrapper such as is commonly employed for pins in the front of which is an opening B closed by a slip of say celluloid C forming a window through which the contents of the package can be seen. The celluloid slip is made somewhat larger than the opening to be closed, so as to overlap the edges of the opening; the overlapping edges of the celluloid are shown in dotted lines at C<sup>1</sup>. The opening B in Figure 1 is circular and that in Figure 2 elongated. The end A<sup>1</sup> of the wrapper is slipped inside the other end A<sup>2</sup> as is usual. The opening B is shown in Figure 3 in the form of a shield.

As shown in Figure 4 the opening B occupies the greater portion of the front of the wrapper which is in the form of an envelope, the seam A<sup>3</sup> being visible through the transparent front; when in use a false back, preferably of coloured paper, may conveniently be slipped in to hide the seam. The tuck or flap is lettered A<sup>4</sup>.

Figure 5 shows a slightly different arrangement requiring no further explanation.

Figures 6 and 7 show a box-like form of envelope with little side flaps A<sup>5</sup> to the opening through which the objects are inserted. This opening may be along a short or a long edge.

In Figure 8 the opening B is shown cut to the shape of the letter N which might represent that the package contained needles. Or the letter might be chosen to indicate the name of the maker or the full name might be so set forth. The same purpose may be effected by painting or embossing or otherwise delineating a trade mark or a name or other symbol or device upon the transparent covering as indicated in Figure 9.

Any design or symbol for the purpose of identification or advertisement or other purpose may be conveniently set forth on the transparent covering C.

Although any desired flexible transparent material may be employed for this covering, such as mica, gelatine, or celluloid, the last named has been found very suitable and is preferred on account of its cheapness, durability, and ease of application.

The envelopes or wrappers are suitable for packing pins, needles, hooks and eyes, safety or blouse pins, buttons and other similar objects.

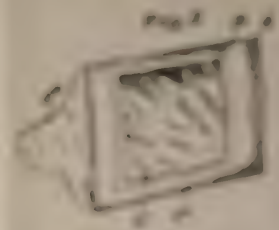
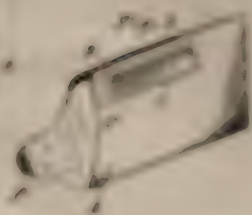
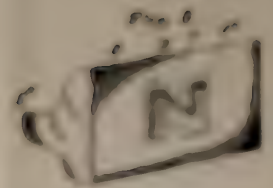
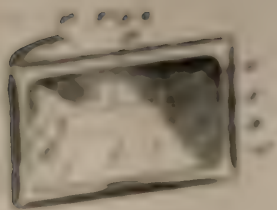
Having now particularly described and ascertained the nature of my said invention and in what manner the same is to be performed, I declare that what I claim is:—

1. A windowed envelope or wrapper.
2. A package comprising the goods or contents and a windowed envelope or wrapper.
3. A windowed envelope or wrapper having one or more openings such as B closed by transparent material representing one or more letters trade marks or devices.
4. A windowed envelope or wrapper having one or more letters trade marks or devices delineated on the window.
5. A windowed envelope or wrapper having one or more openings such as B closed by transparent celluloid or gelatine.
6. The respective windowed envelopes or wrappers substantially as described and illustrated in the accompanying drawings.

Dated this 9th day of May 1898.

ERICH AUGUST BOLDT.

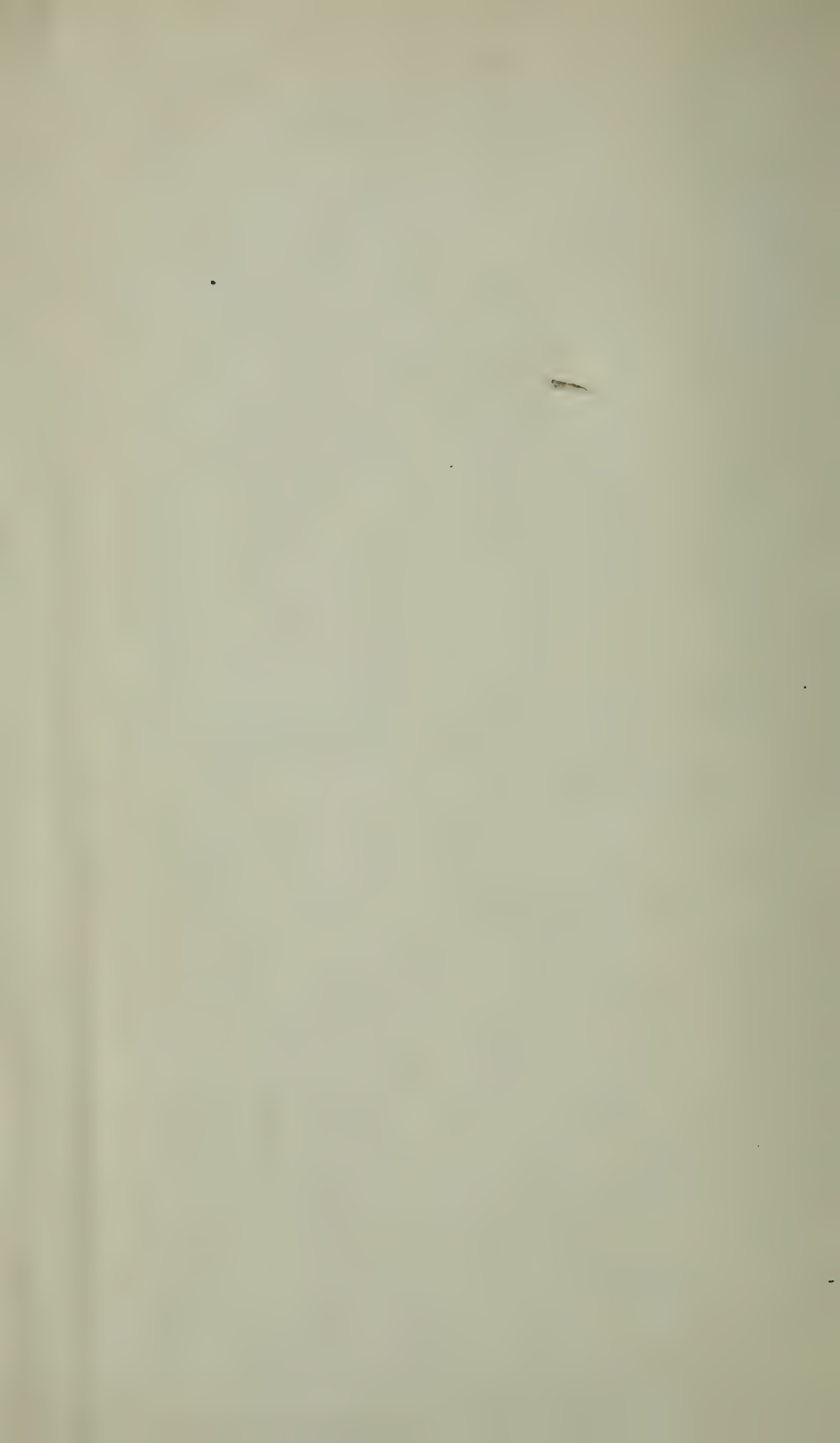
Boulton & Wade,  
Agents for the Applicant.







[Complete Specification of Letters Patent No. 25,532,  
of Arthur Smith and Albert Browne, Accepted  
May 1, 1902.]





Date of Application, 13th Dec., 1901—Accepted

2 723  
Transpar  
4 The co  
and spirit  
of paper on  
purposes an

Dated 13<sup>th</sup> Dec. 1901

COMPLETE SPECIFICATION

**A Combined Opaque and Transparent Tablet, P  
Sign, for Advertising Purposes, and for Disp**

Redhill

We ARTHUR SMITH, and ALBERT BROWNE, Lithographers, of 10, Street Maryhill, in the City of Glasgow, in the County of Glasgow, do hereby declare the nature of this invention and in what manner the same is to be performed, to be particularly described and ascertained in the following statement;—

Our invention consists of printing, or applying on paper, or other material, means a black ink or colour, or inks and colours on the surface of the aforesaid paper to that surface on which the notice is printed and displayed.

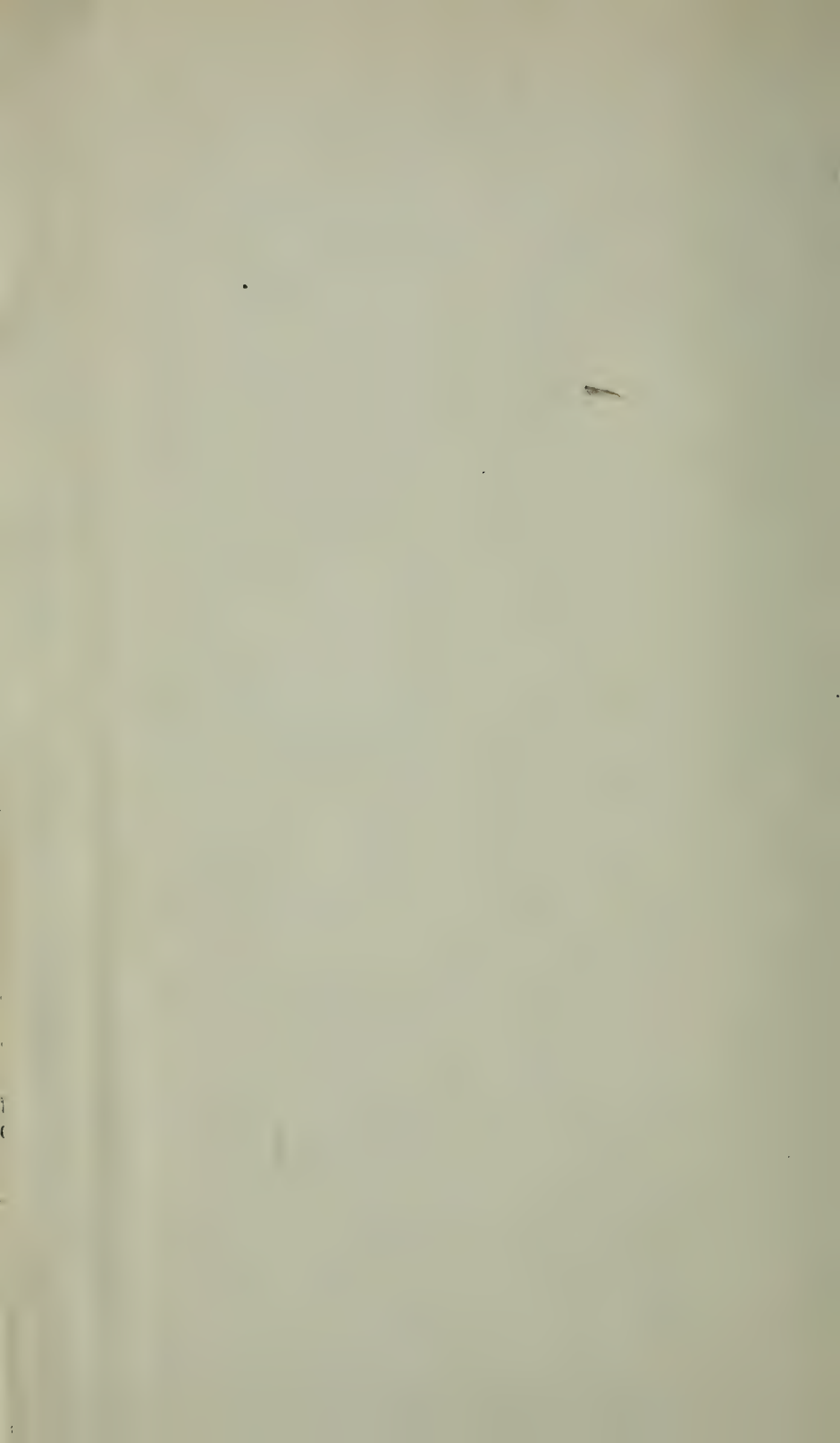
The printing or application of such black ink or colour is for the specific purpose of rendering opaque and determined parts of the said advertisement or public notice, and the said advertisement or public notice is placed before artificial light by means of spirit varnish to make transparent of the said parts of the aforesaid advertisement, or public notice, exposed or left unprotected by the absence of the black ink and colours, which are not printed or applied on the predetermined transparent parts of the reverse or negative surface of the said paper, to that surface on which the advertisement or public notice is printed and displayed.

We apply spirit varnish of ordinary commercial quality to the predetermined parts on the reverse or negative surface of the said paper on which is printed or displayed advertising matter, and the said predetermined parts we purposely leave bare or unprotected, so that by printing or applying black ink or colour or inks and colours on the said predetermined transparent parts of the reverse or negative surface of the said paper, the said advertisement or public notice may be rendered transparent.

The application of spirit varnish is for the specific purpose of rendering transparent only such parts of the advertising matter as are to be shown and become brilliant when the said paper on which the advertising matter is placed before artificial light.

Having now particularly described and ascertained the nature of the invention and in what manner the same is to be performed, what we claim is.

1. A tablet, poster, ticket, label, or sign for advertising purposes, prepared by printing or applying black ink or colour or inks and colours on the surface of the aforesaid paper to that surface on which the notice is printed and displayed.







*Date of Application, 13th Dec., 1901—Accepted, 1st May, 1902*

### COMPLETE SPECIFICATION.

#### **A Combined Opaque and Transparent Tablet, Poster, Label, Ticket or Sign, for Advertising Purposes, and for Displaying Public Notices.**

We ARTHUR SMITH, and ALBERT BROWNE, Lithographers both of 38 Vernon Street Maryhill, in the City of Glasgow, in the County of Lanark, Scotland, do hereby declare the nature of this invention and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement;—

Our invention consists of printing, or applying on paper by, hand, or mechanical means a black ink or colour, or inks and colours on the reverse or negative surface of the aforesaid paper to that surface on which the advertisement or public notice is printed and displayed.

The printing or application of such black ink or colour, or inks and colours is for the specific purpose of rendering opaque and dense certain and predetermined parts of the said advertisement or public notice when the said advertisement or public notice is placed before artificial light and also to enable us by means of spirit varnish to make transparent other certain and predetermined parts of the aforesaid advertisement, or public notice, which parts are exposed or left unprotected by the absence of the black ink, or colour or inks and colours, which are not printed or applied on the aforesaid certain and predetermined transparent parts of the reverse or negative surface of the aforesaid paper, to that surface on which the advertisement or public notice is printed and displayed.

We apply spirit varnish of ordinary commercial manufacture to certain and predetermined parts on the reverse or negative surface of paper to that surface on which is printed or displayed advertising matter, which certain and predetermined parts we purposely leave bare or unprotected by reason of not printing or applying black ink or colour or inks and colours on the said parts.

The application of spirit varnish is for the specific purpose of rendering transparent only such parts of the advertising matter as we desire and intend to show and become brilliant when the said paper on which is printed or displayed advertising matter is placed before artificial light

Having now particularly described and ascertained the nature of our said invention and in what manner the same is to be performed, we declare that what we claim is.

1 A tablet, poster, ticket, label, or sign for advertising purposes and for displaying public notices prepared by printing or applying black ink or colour, or inks or colours on the reverse or negative surface of paper to that surface on which is printed or displayed any advertising matter for the purpose and in the manner herein before described.

2 The application of black ink or colour, or inks and colours on the reverse or negative surface of paper to that surface on which is printed or displayed any advertising matter for the purpose and in the manner herein before described.

3 The application of spirit varnish on the reverse or negative surface of paper to that surface on which is printed or displayed any advertising matter, such paper being prepared by the application of black ink or colour or inks or colours for the purpose and in the manner herein before described.

---

*Transparent Tablet, Poster, Label, Ticket or Sign for Advertising Purposes, &c.*

---

4 The combined application and use of black ink or colour, or inks or colours and spirit varnish on the reverse or negative surface of paper to that surface of paper on which is printed or displayed any advertising matter for the several purposes and in the manner herein before described.

Dated this 13th day of December 1901.

ARTHUR. SMITH.  
ALBERT BROWNE

Redhill: Printed for His Majesty's Stationery Office, by Love & Malcomson, Ltd.—1902.

[Drawings and Specification of Letters Patent No.  
701,839, Patented June 10, 1902, Issued to  
Americus F. Callahan.]

725

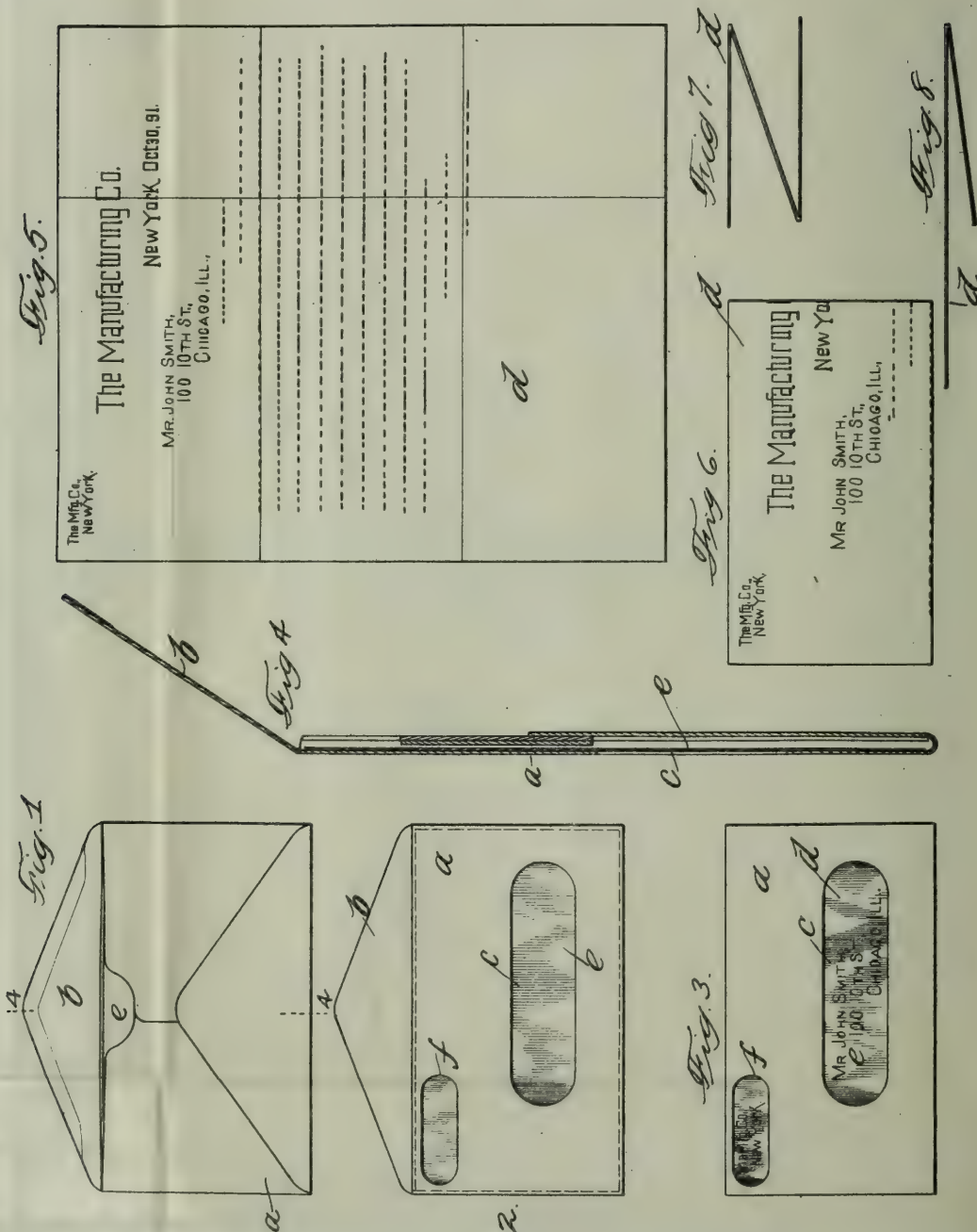
No. 701,839.

Patented June 10, 1902.

A. F. CALLAHAN.  
ENVELOP.

(Application filed Dec. 9, 1901.)

(No Model.)



Witnesses:  
*Lyons A. Williams*  
*Max H. Label* By

*Fig. 2.*  
Charles A. Brown  
Inventor:  
Americus F. Callahan.  
*Cragg & Pelfield*  
Attorneys.



# UNITED STATES PATENT OFFICE.

AMERICUS F. CALLAHAN, OF CHICAGO, ILLINOIS.

## ENVELOP.

SPECIFICATION forming part of Letters Patent No. 701,839, dated June 10, 1902.

Application filed December 9, 1901. Serial No. 86,117. (No model.)

*To all whom it may concern:*

Be it known that I, AMERICUS F. CALLAHAN, a citizen of the United States, residing at Chicago, in the county of Cook and State of Illinois, have invented a certain new and useful Improvement in Envelops, (Case No. 1,) of which the following is a full, clear, concise, and exact description, reference being had to the accompanying drawings, forming a part of this specification.

My invention relates to envelops, and has for its object the provision of means whereby labor and expense in addressing envelops and placing other insignia thereupon may be avoided.

I have devised an improved envelop or inclosing device which is adapted to act in its primary capacity of securely inclosing and sealing the contents of the envelop and in the added capacity of revealing so much of the inclosure as may enable the observer to ascertain the destination of the same.

Generally speaking, my invention comprises a composite envelop made up in greater part of material that is preferably so thick or opaque as to prevent an inspection of the envelop's contents and completed by transparent material so located as to reveal inscriptions upon the inclosure. To this end the obverse side of the envelop is provided with a section of transparent material—as, for example, very thin rice-paper—through which the sending address upon the inclosure may be readily observed, the address being so placed upon the inclosure as to register with this transparent section of the envelop. The corner portion of the obverse side of the envelop where the return address and the like usually appear may also be formed of thin transparent material, so that the return address may be printed upon the letter-head and show through the envelop to thus take the place of the return address usually printed upon the outside of the envelop. By the term "sending address" I mean the address to which the envelop, with its inclosure, is to be delivered. By the term "return address" I mean the address of the sender that has usually been printed heretofore on the corner of the envelop. The balance of the obverse side of the envelop is preferably made of the

same substance as the reverse or back side of the envelop, so that none of the inclosure may be observed except that which appears at the transparent sections. Thus am I enabled to produce an envelop which serves in its primary capacity of securely containing an inclosure and concealing those parts of the inclosure that it is not desirable to have accessible to the general public, while at the same time the inclosure may be so disposed as to reveal to the eye of, for example, the postal officials the address that may be properly located upon the inclosure to appear through the transparent address-section. In other words, the address occurring upon the letter, telegram, or other communication is the identical inscription that is presented through the transparent section in the envelop. In another aspect of my invention, therefore, it may be considered as comprising in its preferred embodiment the combination, with an inclosure bearing a communication having a sending address upon the same side of the paper where the communication appears, of an envelop provided with a transparent sending-address section, the sending address upon the communication and the sending-address transparent section of the envelop being both so relatively placed and proportioned that the sending address only will appear through the sending-address section of the envelop, while the communication proper will be concealed by the more opaque portion of the envelop. It will be seen that by means of my invention the grade of material of the envelop is not of importance as far as utility is concerned. Paper which is not adapted for penmanship or inscription of other kinds may be used for envelops, as the addresses do not have to be inscribed on the paper thereof. Very thin colored paper, as Manila paper, might thus be advantageously used for the comparatively opaque portions of my envelop, as the color will prevent inspection of the envelop's contents. Very cheap Manila paper, in fact, is of special utility in the practice of my invention. Other colored papers than Manila may be employed, or even black paper may be employed for the envelops, black paper, in fact, presenting an advantage over papers of other colors in that a striking contrast may



be provided between the address appearing through the envelop and the balance of the envelop.

The many advantages of envelops constructed in accordance with my invention will be very apparent. In addition to avoiding the great expense in addressing large quantities of envelops, as in large business houses, absolute accuracy is assured, as the sending address upon the inclosure and that appearing through the envelop obviously must be identical.

Many other advantages will present themselves to those acquainted with the invention—as, for example, correspondence that may accumulate late in the evening of a business day may be rapidly mailed, the time and labor of especially addressing envelops being dispensed with, the inclosures only having to be placed in the envelops in such a manner that the addresses will appear through the transparent sections. The device of my invention, of course, is not intended to be restricted to use in the mails. For example, a very wide application of the invention can be made with great advantage to the telegraph-service, where the greatest accuracy in correspondence between the address upon the telegram and that upon the envelop is essential. As is well known, in large telegraph-offices a corps of envelop-addressers is employed for sending out telegrams, necessitating considerable delay in transmission. By forming the envelops in composite sections of opaque and transparent material the address upon the telegram may appear through the transparent section, while the balance of the telegram that should remain secret is thoroughly concealed.

I will explain my invention more fully by reference to the accompanying drawings, illustrating the preferred embodiment thereof, in which—

Figure 1 is a view of the reverse or back portion of the envelop. Fig. 2 is a view of the obverse side or front of the envelop. Fig. 3 indicates the envelop shown in Fig. 2 with an inclosure. Fig. 4 is an enlarged sectional view on line 4 4 of Fig. 1. Fig. 5 is a view showing the inclosure unfolded, but with the folding-lines indicated. Fig. 6 is a view of the inclosure folded, ready for insertion within the envelop. Fig. 7 is an end view of the inclosure shown in Fig. 6, the folds being slightly separated more clearly to illustrate the same. Fig. 8 is a side or lengthwise view of the inclosure as it appears in Fig. 6, the folds being slightly separated more clearly to indicate their relation.

Like parts are indicated by similar characters of reference throughout the different figures.

The envelop *a* is formed of a material which is preferably largely opaque, being preferably provided with a flap *b*, formed integrally with the balance of the main envelop struc-

ture, which flap may be gummed where the inclosure is to be sealed. The main structure of the envelop may be provided with a slot, as indicated at *c*, which slot is located at the usual place where the sending address is to appear. The inclosure—as, for example, the letter-head *d*—is so addressed, folded, and inclosed as to have the sending address appear where the address-slot in the main structure of the envelop is located. In order to prevent the envelop from being torn at this slot and for the purpose of preventing impairment of the original functions of the envelop, the slot in the main body portion of the envelop is covered by a section *e* of transparent material, as rice-paper, which may be found upon the market. Other material obviously might be used in this same connection.

In order that the device of my invention may be adaptable to envelops constructed of different thicknesses of paper and in order that the transparent material may lie as close to the inclosure as possible to more clearly reveal the sending address beneath, this transparent substance is disposed upon the interior of the envelop, as illustrated in Figs 1 to 4. I do not wish to be limited, however, in all embodiments of the invention to this characteristic. Where the invention is also employed for the purpose of avoiding the necessity of printing return addresses and the like upon the exterior of the envelop, the envelop is also provided with a slot in the return-address corner or portion of the envelop, as indicated at *f*. The return address that is to appear through the envelop may be printed upon the upper left-hand corner of the inclosure, so that it may register with the transparent material appearing at the upper left-hand corner of the envelop, the two addresses appearing upon the inclosure being so relatively placed that they will both properly register with the transparent material located at *c* and *f*.

The envelop inclosure *d* contains a communication that is suitably and regularly addressed, the communication being in the form of a letter, telegram, &c. Fig. 5 of the drawings illustrates the body of the communication by short dotted lines. It will be observed from the drawings that the address upon the inclosure bearing the communication is so disposed with reference to the communication and that the sending-address slot is so disposed and proportioned with respect both to the sending address upon the communication and the body of the communication that nothing but the sending address appears through the transparent section of the envelop, the communication proper being concealed by the more opaque portions of the envelop.

Where two openings or slots are provided in the main body portion of the envelop, I preferably place a single sheet of transpar-

ent material within the envelop, pasting the same closely upon the back surface of the front envelop-section rather than provide separate sections of transparent material for each of these openings in the main body portion of the envelop. Where, however, but the one slot is provided in the main body portion of the envelop, the size of the transparent material may be correspondingly reduced.

While I have herein shown and particularly described the preferred embodiment of my invention, it is obvious that changes may be made without departing from the spirit thereof, and I do not, therefore, wish to be limited to the precise construction herein set forth; but,

Having thus described my invention, I claim as new and desire to secure by Letters Patent—

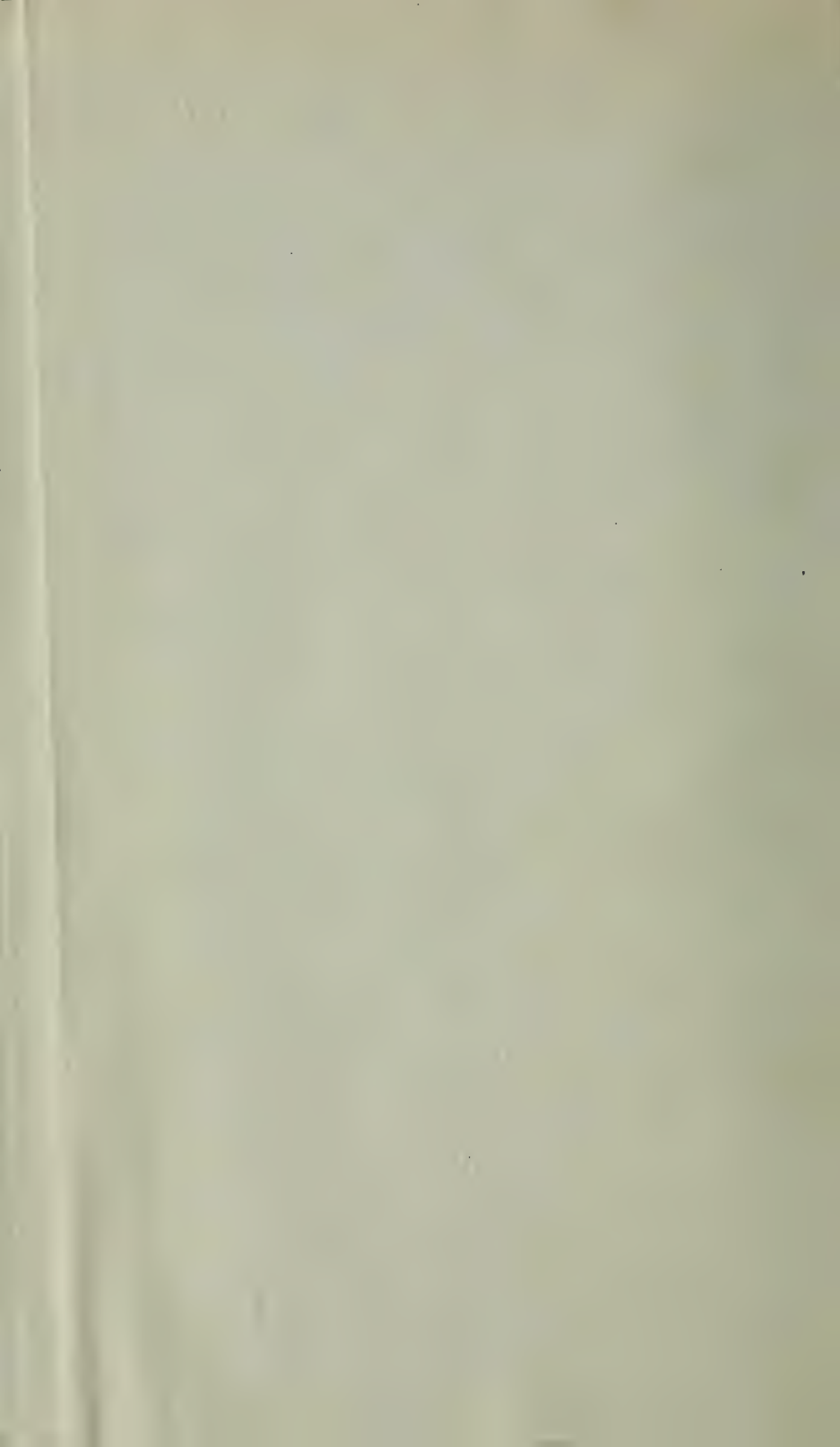
In combination with an envelop having a comparatively opaque face and a display-opening therein having transparent covering, of a folded communication sheet therein, said sheet being so folded with regard to the position of the sendee's name and address upon the same side of the sheet with the communication, that only said name and address appear through the display-opening whereby the sendee's name and address as a part of the communication serves also as the envelop address. 25 30

In witness whereof I hereunto subscribe my name this 15th day of November, A. D. 1901.

AMERICUS F. CALLAHAN.

Witnesses:

HARVEY L. HANSON,  
GEORGE L. CRAGG.





[Drawings and Specification of Letters Patent No.  
14,478, of Max Meyer Cohn and John Charles  
Shipp, Accepted July 28, 1904.]



N<sup>o</sup> 14,478

A.D. 1904

*Date of Application, 27th June, 1904—Accepted, 28th July, 1904*

## COMPLETE SPECIFICATION.

### Improvements in and relating to Envelopes.

We, MAX MEYER COHN, Accountant, of No. 416 Sansome St, and JOHN CHARLES SHIPP, Merchant, of No. 12 Main St, both in the City and County of San Francisco, State of California, U.S.A., do hereby declare the nature of this invention and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement:—

Our invention relates to improvements in envelopes of the character in which the address instead of being written on the envelope itself is on a strip or sheet of paper within, and shows through, the envelope.

The object of our invention is to provide an envelope without any cuts or openings in it leaving raw edges to be caught and torn in the handling of the mail, but which will have a transparent space with a comparatively opaque background to allow the addressee's name and address which may be written upon a sheet inserted into the envelope, to appear through the envelope and serve as the envelope address, and at the same time will permit nothing else written on the enclosed sheet to be legible.

The invention consists of the arrangement of parts and the construction and combination of parts as hereinafter described and claimed, having reference to the accompanying drawings, in which:—

The figures show various forms of my invention.

In carrying out our invention we employ an unpunctured envelope blank of some suitable tough, flexible transparent material as wax-paper or a paper known to the trade as "parchmyn" and apply to one side of the blank by any suitable means some colored ink or pigment, or other suitable lining as will render writing or print illegible through the sheet, except that a suitable transparent space is left through which a name, or address, or other like matter may be plainly read.

A represents an envelope, formed from a blank of any pattern which has been printed to leave a rectangular transparent space 2 for the addressee's name and address to show through and possibly an uncoloured margin 3 on the flap of the envelope whereon the paste or sealing medium is applied. In forming the envelope the blank is preferably folded to bring the coloured lining surface inside.

The transparent space 2 may be of any desired shape such as oval, rectangular, diamond-shape or fancifully bordered and it may be located anywhere on the face of the envelope since there are no raw edges to be protected as where a punctured envelope is used.

Figures 2, 3, 4, show various possible modifications of the same idea.

If desired the blanks before folding may be imprinted to present a generally opaque field with designs or letters in transparency as shown at 4 in Figure 5, in addition to the address space 2.

An unpunctured envelope of this character affords all the advantages of quick mailing by requiring the addressee's name and address to be written only on the statement or communication to be enclosed, the writing or print being so disposed as to appear in the transparent portion: and it is moreover as unlikely

*Cohn and Shipp's Improvements in and relating to Envelopes.*

to be torn in the cancelling machines or otherwise injured in the handling of the mails as an ordinary plain envelope having the name and address written on its face.

We do not wish to be understood as limiting ourselves to coloured paper or paper to be coloured since there are other means for accomplishing the result here desired which is that of producing an imperforate envelope having a generally opaque surface and a limited transparent portion.

It is possible for a tinted transparent paper to be used which may be rendered generally opaque except for a limited transparent space for the addressee's name and address to show through; the finished envelope gives the effect of a transparent light-coloured area on an opaque darker-coloured background.

The sender's name and address which usually appears in one corner of ordinary envelopes, may be printed in small type in different coloured ink on top of the opaque background and when a sheet of paper is inserted into the envelope this name card will appear in strong relief through the envelope. By having all printing and colouring matter inside the envelope there is no danger of their being rubbed off or injured by moisture. Unless the envelope is actually unsealed, moisture cannot effect the legibility of the addressee's name and address.

Having now particularly described and ascertained the nature of our said invention, and in what manner the same is to be performed, we declare that what we claim is:—

(1) As a new article of manufacture, an envelope having an imperforate face portion generally opaque but provided with a limited transparent portion through which the addressee's name and address on an enclosure may be legible, substantially as described.

(2) As a new article of manufacture, an imperforate envelope having a generally opaque coloured surface and a limited transparent portion, substantially as described.

(3) As a new article of manufacture, an envelope having an imperforate face portion imprinted on its inner side to render it generally opaque but leaving a limited transparent area through which a name and address on an enclosure may show, substantially as described.

(4) As a new article of manufacture, an envelope blank of transparent material imprinted to leave only a comparatively limited transparent area through which writing or print is legible, substantially as described.

(5) As a new article of manufacture, an envelope formed from transparent material, the transparency of said material having been destroyed except for a limited area for a name and address contained on an enclosure to show through, substantially as described.

Dated this Twenty-seventh day of June, 1904.

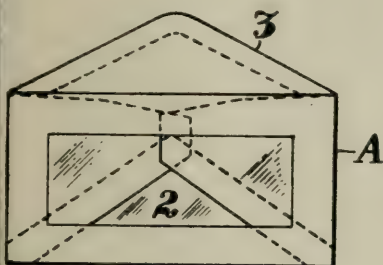
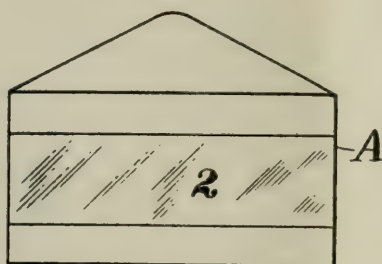
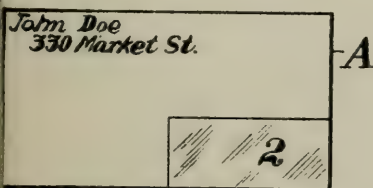
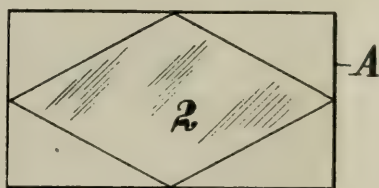
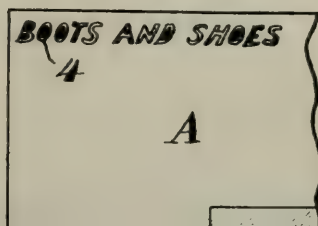
For the Applicants,

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*Fig.1.**Fig.2.**Fig.3.**Fig.4.**Fig.5.*

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